

Judicial Retirement Age: It's Time To Amend the Constitution

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Byline: ROLANDO T. ACOSTA

Body

On Election Day, New Yorkers will vote on an amendment to the State Constitution, popularly referred to as Proposition 6, that, if approved, will materially improve the quality and administration of justice. Proposition 6 will enable our courts to more effectively manage evergrowing caseloads by ending the antiquated practice of automatically forcing active and productive judges off the bench when they reach age 70, while making sure that the pipeline for new judges to enter the judiciary remains open.

New York's Constitution currently requires all state judges to retire at age 70. This age restriction unnecessarily deprives the state of many accomplished judges who can still competently and productively perform their duties. Proposition 6 would first of all allow judges of our highest court, the Court of Appeals, to serve out their 14-year terms of office until the age of 80.

Proposition 6 would also address the crisis of judicial under-staffing in the lower courts. Over the course of the last 30 years, the number of judicial positions in New York has increased by only 8 percent while the number of court filings has increased by 56 percent.

Not surprisingly, this imbalance has meant that justice is dispensed less quickly than we would like- an anathema to those of us who believe that justice delayed is justice denied. Proposition 6 would allow Supreme Court judges who are determined to be mentally and physically fit (and whose services are determined to be necessary to expedite the business of the court) to be allowed to continue to serve to age 80 as well.

A concern commonly raised during discussions about Proposition 6 is the impact that it will have on the election of new judges who are now selected from a far more diverse pool of qualified applicants. Some fear that it may adversely affect the positive diversity gains in the judiciary that have been made over the last decade.

That fear is unwarranted, however, because Proposition 6 will have absolutely no impact on judicial diversity going forward inasmuch as those Supreme Court judges allowed to serve past age 70 as senior judges will not count against the maximum number of judges permitted in each judicial district. Thus, longer-serving senior judges will not crowd out those seeking to become members of the judiciary but will supplement the number of judges available to hear cases.

Gene Preudhomme

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Proposition 6 offers the prospect of justice being administered with greater efficiency and without sacrificing the skillful deliberation for which judges are elected and appointed. Law, after all, is termed a "practice" because it takes years, even decades, to master. It is imperative that we no longer discard those jurists who have had the opportunity to achieve that mastery. Indeed, such experienced judges need to be retained and valued, not sent on their way.

Two recent judicial retirements from the Court of Appeals underscore the need for Proposition 6. Former Chief Judge Judith Kaye reached the mandatory retirement age in 2008. Likewise, former Judge Carmen Beauchamp Ciparick, who served as an associate judge, reached retirement age in 2012. Both had made and were continuing to make significant contributions. However, both were forced to retire when they reached the mandatory retirement age of 70 with their skills still sharp and their accomplishment growing-in sum, when they were in the prime of their career.

Indeed, Kaye and Ciparick have since moved on to thrive in private practice. The private sector, apparently, was more ready than New York State to recognize and appreciate their continued value.

Their experience is not uncommon, as numerous, extraordinary New York state judges have been forced to retire when they were in the prime of their professional careers. As a mandatory retirement age has been prohibited in other fields, more and more people have come to appreciate that those who reach the age of 70 still have a substantial number of productive years ahead of them.

Indeed, mandatory retirement provisions for judges are among the last places where generalizations about whole classes of people are permitted. Elsewhere, individualized inquiry is required to determine a person's ability to perform. In fact, there is no mandatory retirement age in the federal judiciary, where judges remain on the bench or assume "senior status" at their discretion. Rather than indiscriminately mandating retirement, the federal system allows judges to serve as long as they remain fit. Not surprisingly, four of the nine U.S. Supreme Court Justices are over 70.

The time has come to amend the State Constitution that, in this respect, reflects medical knowledge and ideas of fairness that were current in 1869 (when the age restrictions were first adopted), and conform it to what we know medically and ethically in 2013. Don't we want all judges assessed based on their competency and character rather than based on arbitrary age restrictions?

The State Senate and State Assembly have, in two consecutive sessions, already said "yes," to Proposition 6. The need for both efficiency and equity demands that state voters say "yes," too.

ROLANDO T. ACOSTA is an associate justice on the Appellate Division, First Department.

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