

THE STATE BAR OF MICHIGAN REPRESENTATIVE ASSEMBLY
PROPOSED RESOLUTION TO AMEND THE MICHIGAN CONSTITUTION TO
DELETE THE PROHIBITION ON BEING APPOINTED OR ELECTED TO
JUDICIAL OFFICE AFTER AGE 70

Issue

Should the State Bar of Michigan adopt the following resolution calling for an amendment to section 19 of article VI the Michigan Constitution of 1963 to remove the age limitation from eligibility criteria for judicial office.

RESOLVED, that section 19 of article VI of the Michigan Constitution of 1963 be amended to remove the age limitation from eligibility criteria for judicial office, as follows:

ARTICLE VI

Sec. 19. (1) The supreme court, the court of appeals, the circuit court, the probate court and other courts designated as such by the legislature shall be courts of record and each shall have a common seal. Justices and judges of courts of record must be persons who are licensed to practice law in this state.

(2) To be qualified to serve as a judge of a trial court, a judge of the court of appeals, or a justice of the supreme court, a person shall have been admitted to the practice of law for at least 5 years. This subsection shall not apply to any judge or justice appointed or elected to judicial office prior to the date on which this subsection becomes part of the constitution.

~~(3) No person shall be elected or appointed to a judicial office after reaching the age of 70 years.~~

Synopsis

The Michigan Judicial Selection Task Force recommends the removal, by constitutional amendment, of the provision in the judicial article of the Michigan Constitution that prohibits the election or appointment to a judicial office of those persons who have reached the age of 70 years. The Report and Recommendations may be found at <http://mi-judicialselection.com/2012/04/24/michigan-judicial-selection-task-force-report-and-recommendations/>

Background

Michigan's process for choosing supreme court justices has recently attracted national attention for its excessive cost, its lack of transparency, and its damaging negativity. Led by two widely-esteemed Michigan jurists, Justice Marilyn Kelly and Judge James L. Ryan, a diverse group of leading citizens from across the state came together as volunteers united by the conviction that Michigan deserves better. This group, known as the Michigan Judicial Selection Task Force, is composed of conservatives, liberals, and independents; lawyers and non-lawyers; business people and experienced campaigners.

The members examined other states' models of judicial selection through the research and direct testimony of leading scholars and practitioners on all sides of the issue. After intense study and

hours of debate, the Task Force developed common-sense, practical solutions that can make judicial selection in this state more democratic and more effective. The Report and Recommendations covers a wide range of topics relating to judicial selection in Michigan. *This Proposal deals only with the recommendation to remove the age limitation for appointment or election to judicial office from the Michigan Constitution.*

Section 19(3) of the judicial article of the Michigan Constitution provides that “No person shall be elected or appointed to a judicial office after reaching the age of 70 years.” This provision applies only to judges and justices; no other elected officials in Michigan are subject to such an age limitation. The Task Force believes that this limitation is arbitrary in nature and serves no legitimate public interest. Based upon the sole criterion of age, it artificially ends the judicial careers of existing judges and justices who reach the age limitation and unnecessarily constricts the pool of otherwise qualified persons who might be candidates for judicial office. In the process, therefore, this provision warps the judicial selection process in our state. The Task Force recommends the removal, by constitutional amendment, of the age 70 limitation.

Further background: The Representative Assembly has approved resolutions relating to judicial selection on two previous occasions. On September 26, 2002, the Assembly approved a resolution supporting the public funding of judicial elections, consistent with the position of the American Bar Association, stating that public funding of judicial elections serves the best interest of the public, the judiciary and the justice system. (See §20 in <http://www.michbar.org/generalinfo/pdfs/9-26-02Minutes.pdf>. On September 30, 2010, the Assembly approved a resolution supporting amendment of the Michigan Campaign Finance Act requiring disclosure prior to a judicial election of the source of the funding for all expenditures for campaign advertising. (See: <http://www.michbar.org/generalinfo/pdfs/9-30-10AmendmentCampaignFinanceAct.pdf>

Summation

The limitation of age 70 for appointment or election of a supreme court justice or circuit judge goes back as far as the Michigan Constitution of 1908 and was broadened in the Constitution of 1963 to apply to all judicial offices. Given the increase in life expectancy and the universal existence of laws prohibiting age discrimination, section 19 of article VI of the Michigan Constitution of 1963 should be amended, to remove the age limitation from eligibility criteria for judicial office.

As this Proposal is being written, the Michigan Senate is considering Senate Joint Resolution F (2013) which would accomplish the amendment recommended by the Task Force. On January 31, 2013, Senate Joint Resolution F (2013) was reported favorably without amendment to the Committee of the Whole. If passed by both the Senate and the House, the amendment will be submitted for a vote of the people in November 2014.

Opposition to the Proposal

None known.

Fiscal Impact on State Bar of Michigan

None known.

STATE BAR OF MICHIGAN POSITION

By vote of the Representative Assembly on April 27, 2013

Should the State Bar of Michigan adopt the following resolution calling for an amendment to section 19 of article VI of the Michigan Constitution of 1963 to remove the age limitation from eligibility criteria for judicial office.

RESOLVED, that section 19 of article VI of the Michigan Constitution of 1963 be amended, to remove the age limitation from eligibility criteria for judicial office.

(a) Yes

or

(b) No