



**EXECUTIVE CHAMBERS**  
HONOLULU

**LINDA LINGLE**  
GOVERNOR

Testimony of Linda L. Smith  
Senior Policy Advisor to the Governor

Before the

House Committee on Judiciary

Thursday, March 13, 2008, 3:15 p.m.  
State Capitol, Conference Room 325

**SB 3202 PROPOSING AN AMENDMENT TO THE HAWAII CONSTITUTION TO  
EXTEND THE MANDATORY RETIREMENT AGE FOR STATE JUSTICES AND  
JUDGES FROM SEVENTY TO EIGHTY YEARS OF AGE**

Chair Waters and Members of the Committee:

The Office of the Governor opposes Senate Bill 3202, which extends the retirement age of justices and judges in the State's courts from 70 to 80 years old.

In November 2006, Hawaii voters rejected a constitutional amendment that would eliminate mandatory retirement age for justices and judges by a vote of 58 percent to 35 percent. This measure extending the retirement age of justices and judges is premature in light of the voters' actions less than two years ago. As a result, the Governor's Office can find no basis for retroactively extending the retirement age. Doing so would be contrary to the will of the voters.

More importantly, the Governor's Office shares the same concerns enumerated by the Attorney General and the Hawaii Judicial Selection Commission. Specifically, of great concern is the issue of whether extending the terms of justices and judges would prevent attorneys from seeking positions in the Judiciary and adversely impact lower court judges from moving into higher positions within the courts. It is crucial for the State to maintain a Judicial Branch, providing a diversity of backgrounds and points of view. Governor Lingle's appointments have helped create a balance in backgrounds and points of view within the Judicial Branch.

This is not a matter of age discrimination. This is a matter of fairness to this sitting Governor re-elected by an overwhelming level of the voters. As such, we can only support this measure if it is made prospective.

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Testimony of Linda L. Smith  
SB 3202

The Governor's Office respectfully requests that this measure be held, or that language be adopted to make the bill prospective. The language which has been suggested would add the following provision to section 2 of the bill.

"Justices and judges shall be retired upon attaining the age of seventy years[-:], except that justices and judges first confirmed by the senate or appointed by the chief justice to their positions after November 4, 2008 shall be retired upon attaining the age of eighty years. They shall be included in any retirement law of the State."

We urge the committee to amend this measure.

**C00134**



## TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FOURTH LEGISLATURE, 2008

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 3202, PROPOSING AN AMENDMENT TO THE HAWAII CONSTITUTION TO EXTEND THE MANDATORY RETIREMENT AGE FOR STATE JUSTICES AND JUDGES FROM SEVENTY TO EIGHTY YEARS OF AGE

**BEFORE THE:**

HOUSE COMMITTEE ON JUDICIARY

**DATE:** Thursday, March 13, 2008 **TIME:** 3:15 PM

**LOCATION:** State Capitol, Room 325  
*Deliver to: Committee Clerk, Room 302, 5 copies*

**TESTIFIER(S):** Mark J. Bennett, Attorney General  
or Robyn B. Chun, Deputy Attorney General

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Chair Waters and Members of the Committee:

The Department of the Attorney General strongly opposes this bill.

This bill proposes an amendment to the State Constitution to retroactively extend the mandatory retirement age for state court justices and judges from 70 to 80. This proposal represents poor public policy, perpetuates an underrepresentation of women on the bench, has been proposed without sufficient thought or study, and wrongly benefits only a few incumbent judges.

Only two years ago, the Legislature proposed a similar amendment to eliminate mandatory judicial retirement at age 70. That amendment was overwhelmingly rejected by the electorate, obtaining only a 34.8 percent Yes vote, with a 57.8 percent No vote. The No votes exceeded the Yes votes by 80,000. The amendment lost on every island, and we believe it lost in virtually every single one of the Hawaii's many hundreds of precincts. There is no justification for bringing this subject back only two years after such an unequivocal mandate from the voters. Moreover, it is possible for the public to conclude that the major reason for bringing this proposal back immediately, without any study or alternatives, is to preclude the present governor from appointing a

new chief justice to the Hawaii Supreme Court when the present chief justice reaches the age of 70 in 2010.

When Hawaii's Constitution was originally adopted in 1959, article V, in addition to establishing a retirement age of 70 for judges, also provided: "The term of office of a justice of the supreme court shall be seven years and that of a judge of a circuit court six years." The framers were clearly concerned about lengthy judicial terms.

Since then, the terms of justices and judges have been extended, but not the mandatory retirement age, so that the current retirement age serves both to limit tenures (there is no other absolute limit) and to ensure that there are opportunities for lawyers to be appointed to the bench through vacancies, and for judges of the lower courts to be appointed to higher courts through retirements.

It should be noted that when judges who are now nearing the mandatory retirement age were appointed, there were significantly fewer judicial opportunities for women, and to a certain extent for minorities. The proposed amendment would perpetuate reduced judicial opportunities, especially for women and minority lawyers. The serious consequences of such a change are made clear by the testimony of the Hawaii Judicial Selection Commission - the body tasked with merit selection of judges in Hawaii - on the 2006 proposal to eliminate mandatory retirement at age 70:

We fear that this legislation will make it far more difficult for current judges to move up to higher judicial positions, will discourage many attorneys from applying for judicial openings, and will, therefore, impede the introduction of new ideas and ways of looking at the law.

A New York blue ribbon "Task Force on Mandatory Retirement of Judges" reported similar conclusions:

[C]ontinuation of judicial service beyond age 70 [should] not [be] at the expense of reduced judicial opportunities or delayed entry into the



judiciary for women and minority lawyers. Regular turnover invigorates the judiciary by bringing fresh ideas and greater diversity to the bench . . . . [We note] the relatively high diversity [among judges, in the last] five years, and the relatively low diversity among the group of Justices most recently certificated for service beyond age 70.

Extending the mandatory retirement age will defeat these objectives to the detriment of the bench.

The New York task force conducted many months of careful study on the issue of mandatory judicial retirement, including examination of alternatives to a mandatory retirement age -- for example, a senior judge system, which would allow judges to take reduced caseloads with reduced pay after a certain age and simultaneously foster more opportunities for judicial service by women, minorities, and younger lawyers. In Hawaii, in contrast, no thoughtful examination has been done.

Such an examination should look at the retirement age of judges; whether a better system might be to require retirement at 70 but allow judges or justices to reapply for their positions; term limits; whether, if there is to be a change, it should be retroactive; and other related matters. In 2007, several resolutions were introduced to establish a task force to study this issue, but none received a hearing. Several have been reintroduced in 2008, including S.R. No. 30 and S.C.R. No. 58, which state:

WHEREAS, major concerns with the proposed amendment [to repeal mandatory judicial retirement at age 70] included the lack of any careful study of:

- (1) The effects of a repeal of the retirement age on the Judiciary and the administration of justice, including a study of whether the retirement age should be retained, altered, or eliminated and, if so, whether prospectively only;

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(2) Whether there should be term limits for state court justices and judges;

(3) Whether there should be a senior judge system for state court justices and judges; and

(4) Whether there is currently sufficient judicial accountability and means for determining judicial fitness; and

WHEREAS, a study:

(1) Reviewing the practices of other jurisdictions regarding: the regulation of judicial retirement, term limits for judges, a senior judge system, judicial accountability, and means for determining judicial fitness;

(2) Identifying public policies promoted or impeded by: the current Hawaii mandatory judicial retirement age or its alternatives, the lack of judicial terms limits in Hawaii, the lack of a senior judge system in Hawaii, the current Hawaii system of judicial accountability, and the current Hawaii means for determining judicial fitness; and

(3) Collecting data on the impact of changing any of the above;

would be valuable in facilitating an informed discussion of, evaluating the merits of retaining, repealing, or amending, the current Hawaii: mandatory judicial retirement age, including if there is to be a change whether it should be prospective only; lack of judicial terms limits; lack of a senior judge system; system of judicial accountability; means for determining judicial fitness . . . .

Such a fundamental change in the judicial system as proposed in S.B. No. 3202 should not proceed without careful study.

If this amendment is to be proposed regardless of the bad public policy it embodies, it should be materially amended to eliminate the strong perception that it is intended to benefit only a few sitting judges. Incumbent judges and justices were appointed

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to the bench under a certain set of rules, and other lawyers chose not to seek appointment under the same rules. As a matter of fundamental fairness, the change should not apply to judges who have already been appointed. In its 2006 testimony, the Judicial Selection Commission pointed out:

[W]e feel that this is unfair to all those applicants and judges who made their decisions based on the current rules. Therefore, if the Legislature wishes to repeal the mandatory retirement age of 70, they should at least apply these rules prospectively to future appointed judges.

Thus, although we strongly oppose this bill, we urge the Committee to amend the relevant part of section 2 of the bill, if the bill is passed:

Justices and judges shall be retired upon attaining the age of seventy years[-], except that justices and judges first confirmed by the senate or appointed by the chief justice to their positions after November 4, 2008 shall be retired upon attaining the age of eighty years. They shall be included in any retirement law of the State.

If the bill is so amended, the ballot question in section 3 of the bill should read:

Shall the mandatory retirement age for all newly appointed state court justices and judges be extended from seventy to eighty years of age?

We urge the Committee to hold this bill.



**Judicial Selection Commission** — THE JUDICIARY • STATE OF HAWAII'

417 SOUTH KING STREET • HONOLULU, HAWAII 96813 • TELEPHONE (808) 538-5200 • FAX (808) 538-5205

*Rosemary Fazio, Chair  
Philip Hellreich, Vice Chair  
Shelton Jim On, Secretary*

*Melvin Chiba  
Thomas Fujikawa  
Susan Ichinose  
Ralph LaFontaine  
Frederick Okumura  
Sheri Sakamoto*

TESTIMONY OF THE JUDICIAL SELECTION COMMISSION

TWENTY-FOURTH LEGISLATURE, 2008

On the Following Measure:

SB 3202, PROPOSING AN AMENDMENT TO THE HAWAII CONSTITUTION TO EXTEND THE MANDATORY RETIREMENT AGE FOR THE STATE JUDGES FROM SEVENTY TO EIGHTY YEARS OF AGE.

Before the:

HOUSE COMMITTEE ON JUDICIARY

Date: March 13, 2008

Time: 3:15 p.m.

Location: State Capitol, Conference Room 325

Testifier: Rosemary Fazio, Chair of the Judicial Selection Commission

Chair Waters, Vice-Chair Oshiro, and Members of the Committee.

This relates to SB3202, which proposes a constitutional amendment to extend the mandatory retirement age for judges.

Two years ago, the Judicial Selection Commission opposed a similar proposal. I have attached our prior letter, dated March 23, 2006. The Judicial Selection Commission continues to have the same reservations about the current proposal, SB 3202, and therefore opposes it.

The Judicial Selection Commission thanks the House Committee on Judiciary for allowing us again to express our concerns.

*Rosemary Fazio*



**Judicial Selection Commission - THE JUDICIARY - STATE OF HAWAII**  
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Mevin Chiba, Chair  
Rosemary Fazio, Vice Chair  
Lou Suzawa, Secretary

March 23, 2006

Sidney Ayabe  
Thomas Fujikawa  
Philip Helbrech  
Sharon Jim On  
Ralph LaFountaine  
Sheri Sakamoto

Representative Dwight Takamine  
Chair, Finance Committee  
Hawaii State House of Representatives  
State Capitol, Room 306  
Honolulu, Hawaii 96813

Dear Representative Takamine:

Re: SB995 SD1: Judges; Mandatory  
Retirement Age (ConAm)

The Judicial Selection Commission appreciates this opportunity to express some concerns about this proposed constitutional amendment. The Commission believes that the proponents of this legislation are convinced that this change is in the public interest, but we feel an obligation to share our reservations with the House Finance Committee.

We fear that this legislation will make it far more difficult for current judges to move up to higher judicial positions, will discourage many attorneys from applying for judicial openings, and will, therefore, impede the introduction of new ideas and ways of looking at the law. Additionally, we feel that this is unfair to all those applicants and judges who made their decisions based on the current rules. Therefore, if the Legislature wishes to repeal the mandatory retirement age of 70, they should at least apply these rules prospectively to future appointed judges.

The Judicial Selection Commission once again thanks the House Finance Committee for allowing us to express our concerns.

Sincerely yours,

*Melvin Chiba*

Melvin Chiba, Chair

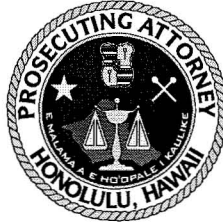
cc. Representative Sylvia Luke, Chair  
House Judiciary Committee

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DEPARTMENT OF THE PROSECUTING ATTORNEY  
CITY AND COUNTY OF HONOLULU

ALII PLACE  
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PETER B. CARLISLE  
PROSECUTING ATTORNEY



DOUGLAS S. CHIN  
FIRST DEPUTY  
PROSECUTING ATTORNEY

**THE HONORABLE TOMMY WATERS, CHAIR  
HOUSE COMMITTEE ON JUDICIARY**

Twenty-Fourth State Legislature  
Regular Session of 2008  
State of Hawaii

March 13, 2008

**RE: S.B. 3202; PROPOSING AN AMENDMENT TO THE HAWAII CONSTITUTION TO  
EXTEND THE MANDATORY RETIREMENT AGE FOR STATE  
JUSTICES AND JUDGES FROM SEVENTY TO EIGHTY YEARS OF  
AGE.**

Chair Waters and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in opposition to S.B. 3202.

The purpose of this bill is to amend article VI, section 3 of the state constitution to increase the mandatory retirement age for justices and judges from 70 years of age to 80 years of age.

The issue of changing or repealing the mandatory retirement age for justices and judges has been discussed in previous legislative sessions and a constitutional amendment to repeal the mandatory retirement age for judges was rejected by the electorate in November 2006, with 57.8% of voters voting against repeal and 34.8% of voters in favor of repeal. It is clear from the previous discussions that there are several options used by other jurisdictions to promote judicial accountability and to determine judicial fitness; these options include term limits, a senior judge system. It is also clear from previous discussions, that there are other issues such as whether any changes to the mandatory age of retirement should apply only to new judges or whether such changes should apply to judges presently serving who chose to serve knowing the mandatory age is age 70.

Given the number of issues involved, we believe there should be a study to examine the issues and to collect data so that an informed discussion can be facilitated and that no changes be made without such study. Specifically, we believe the study should look at: 1) the effects of the alteration or elimination of the mandatory retirement age and if any recommended changes should be applied prospectively only; 2) whether there should be term limits for state court

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judges and justices; 3) whether there should be a senior judge system; and 4) whether there is sufficient judicial accountability and means for determining judicial fitness under the current system. Therefore, we prefer the passage of a resolution which proposes such a study rather than this bill; such resolutions were submitted last year and have again been submitted this year.

For these reasons, we oppose the passage of S.B. 3202 and respectfully request that it be held.

Thank you for this opportunity to testify.

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To: House Committee on Judiciary  
Rep. Tommy Waters, Chair  
Rep. Blake Oshiro, Vice-Chair

Date: March 13, 2008  
Conference Room 325  
3:15 pm

Re: SB 3202 PROPOSING AN AMENDMENT TO THE HAWAII  
CONSTITUTION TO EXTEND THE MANDATORY RETIREMENT AGE FOR  
STATE JUSTICES AND JUDGES FROM SEVENTY TO EIGHTY YEARS OF AGE

Chair Waters and Members of the Committee:

My name is Ed Thompson, Associate State Director of Advocacy for AARP Hawaii. We are a membership organization for people 50 and older with 156,000 members in Hawaii. AARP provides access to services and information, meaningful volunteer opportunities, and the opportunity for our members to create positive change in their lives.

AARP supports SB 3202, which proposes a constitutional amendment to change the mandatory retirement age for all newly appointed justices and judges from 70 to 80 years of age.

Currently, the mandatory retirement age of 70 years for justices and judges is the only provision in our state constitution that requires a state employee to retire at a given age. Also, there is no provision in the Hawaii Revised Statutes that requires a state employee to retire at a particular age.

Mandating that all justices and judges retire at any age constitutes age discrimination. We believe, like others, that Hawaii would benefit from willing and able workers of all ages who have the wisdom and institutional memory of experienced workers at all levels.

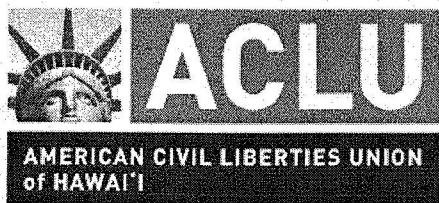
As you know, Hawaii provides an appropriate system of judicial review that operates regardless of age. Judges and justices are monitored and reviewed for their performance by the Judicial Performance program that conducts periodic evaluations after soliciting comments from attorneys who practice before the judge or justice. There are other checks to ensure judges and justices are qualified.

We believe that increasing the mandatory retirement age for justices and judges from 70 to 80 is a good step towards eliminating age discrimination in the judicial system in Hawaii.

Thank you for the opportunity to testify before your committee.

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**BY EMAIL: [JUDtestimony@Capitol.hawaii.gov](mailto:JUDtestimony@Capitol.hawaii.gov)**

Committee: Committee on Judiciary  
Hearing Date/Time: Thursday, March 13, 2008, 3:15 p.m.  
Place: Room 325  
Re: *Testimony of the ACLU of Hawaii to Offer Comments on SB 3202, Proposing an Amendment to Article VI, Section 3, of the Hawaii Constitution to Extend the Mandatory Retirement Age By Ten Years For State Justices and Judges*

Dear Chair Waters and Members of the Committee on Judiciary:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes to offer comments on S.B. 3202, which proposes a constitutional amendment to extend the mandatory retirement age for state justices and judges to 80.

The Legislature should attempt to eliminate age discrimination in the judicial system rather than further it. Although raising the mandatory retirement age is a step in the right direction, any mandatory retirement age necessarily constitutes age discrimination.

Mandatory retirement for judges constitutes age discrimination

When a competent judge is forced to retire solely because he or she reaches a certain arbitrary age, that judge is denied equal protection of the law. The sole criterion for employment decisions relating to age should be the judge’s competency.

Hawaii provides a variety of ways to address performance absent age discrimination

Hawaii provides an appropriate system of judicial review that operates regardless of age. The Hawaii Commission on Judicial Conduct investigates reports of judicial misconduct and may recommend dismissal to the Hawaii Supreme Court. The Judicial Performance program periodically conducts performance reviews and evaluations after soliciting comments from the attorneys who practice before that judge. For disability or impairment, judges are referred to the Supreme Court’s Attorneys and Judges Assistance program. In addition, for those judges who wish to continue in office at the end of their terms, the Judicial Selection Commission reviews their performances, including soliciting public comment through notices published in the newspapers. If the electorate has concerns about judges’ performances, then this system should

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be examined and improved. However, these many checks ensure that it is highly unlikely that an unqualified judge would be able to remain on the bench.

Repealing the Mandatory Retirement Age is Good Public Policy

Simply put, the Legislature should be attempting to repeal the mandatory retirement age because it's the right thing to do. Age alone does not determine whether someone is competent. Hawaii should follow the example set by the federal system, which does not subject Supreme Court or other federal judges to mandatory retirement. Forcing judges to retire at 70 denies Hawaii's citizens of the experience, ability, efficiency and productivity that older judges can offer.

In 1959, when the mandatory retirement clause was included in Hawaii's Constitution, the average life expectancy was only 71.55 and the committee report admits that the fixing of the compulsory retirement age is debatable. Improvements in health and medicine have improved the average life expectancy to almost 78 and, as such, the need for mandatory retirement must be examined.

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 40 years.

Thank you for this opportunity to testify.

Sincerely,

Daniel M. Gluck  
Senior Staff Attorney  
ACLU of Hawaii

American Civil Liberties Union of Hawai'i  
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**HAWAII GOVERNMENT EMPLOYEES ASSOCIATION**

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The Twenty-Fourth Legislature, State of Hawaii  
Hawaii State House of Representatives  
Committee on Judiciary

Testimony by  
Hawaii Government Employees Association  
March 13, 2008

**S.B. 3202, S.D. 1 – PROPOSING  
AN AMENDMENT TO  
ARTICLE VI, SECTION 3, OF  
THE HAWAII CONSTITUTION  
TO EXTEND THE MANDATORY  
RETIREMENT STATE JUSTICES  
AND JUDGES FROM SEVENTY TO  
EIGHTY YEARS OF AGE**

The Hawaii Government Employees Association supports the purpose and intent of S.B. 3202, S.D. 1, which proposes a constitutional amendment to extend the mandatory retirement age of 70 for state justices and judges to 80 years of age. Each individual deserves consideration as an individual member rather than a stereotypic member of a certain group.

The mandatory retirement age of 70 automatically considers that all judges and justices unfit to perform their judicial duties beyond that point. The current age restriction precludes the state from utilizing the experience and ability of jurists who reach the age of 70, who are still highly productive. It makes good sense to increase the mandatory retirement age for justices and judges to 80 years of age.

Thank you for the opportunity to present testimony in support of S.B. 3202, S.D. 1.

Respectfully submitted,

Nora A. Nomura  
Deputy Executive Director

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## **KAT BRADY – PERSONAL TESTIMONY**

### **COMMITTEE ON JUDICIARY**

Rep. Tommy Waters, Chair

Rep. Blake Oshiro, Vice Chair

Thursday, March 13, 2008

3:15 p.m.

Room 325

### **SUPPORT for SB 3202**

Aloha

My name is Kat Brady and I am a justice advocate. I am testifying today on my own behalf in support of SB 3202 to raise the retirement age of judges from 70 years to 80 years, although I believe there should be no retirement age set in the Hawai`i State Constitution.

Medical advances are occurring almost daily, people are living healthier, longer, and more vibrant lives. Seventy years olds today are still a vital part of our workforce and contributing members of our community.

In 1959, when the mandatory retirement clause was included in Hawai`i's Constitution, the average life expectancy was only 71.55 and the committee report admits that the fixing of the compulsory retirement age is debatable. Improvements in health and medicine have improved the average life expectancy to almost 78 and, as such, the need for mandatory retirement must be examined. People are leading healthier lives, living longer and working longer.

And why would we want to toss out all this experience, especially in Hawai`i where we honor our kupuna and revere their wisdom? Why would we treat our learned and experienced jurists with such disrespect?

### **Mandatory retirement for judges constitutes age discrimination**

Mandatory retirement constitutes age discrimination in that it violates the civil liberties of individuals not to be judged on arbitrary assumptions based on their age. The sole criterion for employment decisions relating to age should be the ability of the individual to perform the job function.

### **NO ONE SHOULD BE FORCED TO RETIRE BECAUSE OF A BIRTHDAY!**

#### **Most States Have Higher or No Age Limitation**

- State judges in 18 states have no age restrictions
- State judges in 12 states and the District of Columbia have a mandatory retirement age above 70
- 21 states, including Hawai`i, require retirement at age 70

The trend among states is toward longer service - in 1999, 24 states required retirement at age 70 – this number has fallen to 21 today.

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## **FEDERAL JUDGES HAVE NO MANDATORY RETIREMENT AGE.**

### **Hawai`i provides a variety of ways to address performance absent age discrimination**

Hawai`i provides an appropriate system of judicial review that operates regardless of age.

- **The `Hawai`i Commission on Judicial Conduct** investigates reports of judicial misconduct and may recommend dismissal to the Hawai`i Supreme Court.
- **The Judicial Performance program** periodically conducts performance reviews and evaluations after soliciting comments from the attorneys who practice before that judge.
- For disability or impairment, judges are referred to the **Supreme Court's Attorneys and Judges Assistance program**.

In addition, for those judges who wish to continue in office at the end of their terms, the **Judicial Selection Commission** reviews their performances, including soliciting public comment through notices published in the newspapers. State judges have term limits (6 years for district court judges and 10 years for circuit and appellate court judges) and must be retained by the Judicial Selection Commission at the end of each term.

If the electorate has concerns about judges' performances, then this system should be examined and improved.

All these checks ensure that it is highly unlikely that an unqualified judge would be able to remain on the bench.

### **Repealing the Mandatory Retirement Age is Good Public Policy**

Age alone does not determine whether someone can do their job. Hawai`i should follow the example set by the federal system, which does not subject Supreme Court or other federal judges to mandatory retirement. Forcing judges to retire at 70 denies Hawai`i's people the experience, ability, efficiency, and productivity that older, more experienced judges can offer.

### **Fresh Ideas Can Be Introduced Into the Judiciary Without Discriminating on the Basis of Age**

The judiciary is a dynamic system that constantly introduces and incorporates fresh ideas. However, there are a number of ways to ensure that our judges are staying at the top of their game, including requiring regular educational program participation.

### **Article VI, Section 3 Has Resulted in the Loss of Valuable Jurists**

Because of this provision we have lost valuable jurists – Judge Edward Nakamura from the Supreme Court, Judge Harry Tanaka from the Intermediate Court of Appeals and Judge Wilfred Watanabe from the Circuit Court.

In a March 27, 2007 article in the Daily Record, New York State Bar Association President Mark Alcott said, "It makes no sense to impose this mandatory retirement policy on state court judges when no other government officials - including federal judges - are subject to such a requirement. It is especially shortsighted to require them to leave at age 70, at a time when the productive healthy lifespan of most Americans extends well beyond that age. We have lost the services of many talented and experienced judges because of this policy."

Source: [http://findarticles.com/p/articles/mi\\_qn4180/is\\_20070327/ai\\_n18761279](http://findarticles.com/p/articles/mi_qn4180/is_20070327/ai_n18761279)

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The argument that this amendment should be prospective is flawed and NOT in the interest of justice or the public interest. To put this in context, consider the Fifteenth Amendment-The right of African Americans to vote or the Nineteenth Amendment-The right of women to vote, what if these amendments were prospective? Would it have been fair to say to people of color and to women, well you weren't born with the right to vote, so tough luck – but you kids can vote?

I'm not an attorney, but I know when things are not fair. And forcing someone to retire just because of a birthday is WRONG!

Please pass this measure to affirm that the Hawai'i State Legislature does NOT support age discrimination in any way, shape or form.

Mahalo for this opportunity to testify.

#### **ENDNOTES:**

#### **RESOURCES:**

##### **Report of the Task Force on Mandatory Retirement of Judges – June 1999**

Source: [http://www.courts.state.ny.us/press/old\\_keep/manretrep.pdf](http://www.courts.state.ny.us/press/old_keep/manretrep.pdf)

A fundamental tenet of our society and constitutional system of government is that each person should be treated as a unique and valuable individual rather than a statistic or stereotypic member of a given group. Mandatory retirement treats all judges who reach the age of 70, except Supreme Court Justices, as if they were unfit to perform their judicial duties beyond that point. This is both inequitable and unwise. Under the current age restriction, the State is denied the experience and ability of many jurists working at the peak of their productivity and intellectual powers. The retirement demarcation of 70 has long since ceased to bear even a minimal relationship to the State's goal of maintaining a qualified, effective judiciary. To the contrary, the current retirement age is counterproductive to judicial efficiency and productivity. In too many cases, it dispenses with highly experienced jurists capable of discharging their duties with great effectiveness well beyond age 70.

The concern expressed more than a century ago by the drafters of the State Constitution's mandatory retirement provision that "the natural decay of the powers of [humanity] might at times leave upon the bench an inefficient judge" is today belied by the revolutionary improvements in health and medicine that have so greatly increased average life expectancy and enriched our society. When New York's mandatory retirement age was adopted in 1869, the average life expectancy was in the 40s. Today, the average American can expect to live 76.1 years. Moreover, life expectancy increases as people live longer. Thus, a 65-year old judge can now expect to live into the 80s, well beyond the mandatory retirement age.

#### **References:**

- *U.S. Life Expectancy Hits New High*, New York Times, September 12, 1997, at A14.
- Persons reaching age 65 in 1992 could expect to live to 82.5 years of age. *Sixty-Five Plus in the United States*, U.S. Census Bureau (1995).
- See Richard A. Posner, *Aging and Old Age*, University of Chicago Press, at 180-181 (1995).
- The Aging of Intelligence: Potential and Limits (Staudinger, Cornelius & Baltes) 503 *The Annals* 43, 45 (1989). "Despite age-related declines in learning ability and memory performance, healthy older adults demonstrate superior performance in selected domains such as knowledge of their profession and life matters, and in pragmatic aspects of intellectual functioning such as creativity and wisdom. Wisdom was defined as the advanced cognitive development and mastery over one's emotions that comes with age, experience, introspection, reflection, intuition and empathy, and creativity as the ability to apply unique, feasible solutions to new situations."

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