

TESTIMONY OF KATHLEEN D. WILKINSON
CHANCELLOR, PHILADELPHIA BAR ASSOCIATION,
BEFORE PENNSYLVANIA HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE – SUBCOMMITTEE ON COURTS
REGARDING HB 79 – MANDATORY RETIREMENT AGE
FOR JUDGES IN THE COMMONWEALTH

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Harrisburg, PA

Good morning, Chairman Grell, Chairman Sabatina, Representative Harper, and members of the House Judiciary Committee Subcommittee on Courts. I am Kathleen Wilkinson, partner at the Philadelphia law firm of Wilson Elser Moskowitz Edelman & Dicker LLP and Chancellor of the Philadelphia Bar Association. On behalf of the 13,000 members of the oldest association of lawyers in the United States, thank you for the opportunity to be here today.

The Philadelphia Bar Association has a long history of advocating for a high-quality judiciary that wisely interprets and fairly applies the laws you enact.

We applaud the General Assembly for taking a strong interest in the viability of our courts and in the quality of justice afforded to our citizens.

I would like to begin by noting that the Philadelphia Bar Association has not taken an official position on House Bill 79. Additionally, my testimony here today does not address recent lawsuits challenging mandatory retirement pending before the state Supreme Court and U.S. District Court.

Current law requires judges to retire with an option to go on senior status at age 70. Judges are the only elected officials in the state who are required to step down at a certain age. No elected members of the executive or legislative branches of government face such a requirement.

Of course, Pennsylvanians have an important interest in maintaining a judiciary fully capable of performing the demanding tasks of judicial office.

At the same time, judges can perform their duties credibly, and indeed sometimes with great distinction, at advanced ages.

One need only consider the examples of Oliver Wendell Holmes, Louis Brandeis, and Billings Learned Hand to confirm this point. Each performed with distinction into his 80s. As such, members of the judiciary can be expected to have a substantial stock of productive years even after attaining age 70. Currently, four Justices of the United States Supreme Court – Ruth Bader Ginsberg, Stephen Breyer, Antonin Scalia and Anthony Kennedy – are over 70 years old. Their vigor and intellect are undiminished.

Thirty-three states and the District of Columbia have set mandatory retirement ages. Many states and the federal system recognize that older judges can continue to adjudicate full-time beyond their 70th birthdays.

The federal judiciary permits judges to remain active – that is, full-time – as long as they wish. Federal judges may choose to take senior status once they have been a federal judge at least 10 years and their age plus years on the bench add up to at least 80. This is called the “rule of 80.”

Senior federal judges who continue to work at least a third of the case load of an active judge in their court must be “certified” each year by their court’s chief judge and the chief judge of their circuit. Yearly certification is a given unless there is some impairment or if there are issues in the nature of personnel problems with the judge. No active judge can be removed without impeachment or being adjudicated an incompetent. Once a federal judge elects senior status, an active judgeship opening is created.

Pennsylvania also maintains a senior status system. According to the Pennsylvania Rules of Judicial Administration, a Pennsylvania judge must be at least 65 years old on the date on which he or she begins senior service, or have a combination of years of judicial service plus age that totals at least 80. In most cases, senior status ends on the last day of the calendar year in which a judge reaches age 78.

While an increase in the mandatory retirement age from 70 to 75 could introduce competency concerns, mechanisms already exist to address such issues. It is also within the purview of the Judicial Conduct Board of Pennsylvania to address complaints of mental or physical disability, in instances in which a judge is either mentally or physically unable to perform his or her duties.

The increased longevity of the general population, including the judiciary, makes it important to inquire periodically whether adjustments to mandatory retirement ages are justified.

The mandatory retirement provision has existed since 1969, at which time the life expectancy of the average person was approximately 70 years. By contrast, the current life expectancy is approximately 78 years because of healthier lifestyles, medical advances and environmental conditions.

Additionally, the expanding use of technology enables older judges to remain productive past 70. An increased mandatory retirement age would not necessarily reduce the quality or quantity of judicial output.

Of course, an increase in the mandatory retirement age is likely to cause incumbent judges to remain on the bench longer, thereby reducing the number of openings available for typically younger, aspiring judges. This past Sunday, the Baltimore Sun reported on the impending retirement of Robert M. Bell, Chief Judge of the Maryland Court of

Appeals, who will reach Maryland's mandatory retirement age of 70 this July. Bell told the reporter for the Sun, "As time passes, you need the infusion of new energy and new visions and new ideas. You're more likely to get that with new blood."

While Judge Bell raises a good point, an extended retirement age may also serve to attract qualified lawyers at the height of their careers to run for the bench who otherwise may have thought that it was too late for them to do so.

An extended retirement age may also be a boon for women, who often experience career interruptions due to family obligations early in their careers and therefore may not feel ready to sit on the bench until later in their professional lives than their male counterparts. In addition, women have a greater average life expectancy than men.

What is clear is that judges of both genders can expect to live significantly beyond the current mandatory retirement age of 70.

In summary, increased longevity, technological developments, and other demographic trends make a compelling argument for an upward adjustment in the current mandatory retirement age of 70. As Representative Harper has indicated, by giving judges more time on the bench, the Commonwealth and its citizens will benefit from the knowledge, experience and temperament of seasoned jurists.

Thank you for the opportunity to address the Subcommittee on this issue of vital importance to our lawyer members and our community.

