

Memorandum

TO: Ryan R. Augsburger
Ohio Manufacturers' Association

FROM: Miranda C. Motter
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RE: State Issue 1 – Judicial Retirement Age

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This November, Ohio voters will be asked to approve a constitutional amendment that would raise the age at which a state judge could be elected or appointed to 75 from the current age of 70. Ohio judges are not term limited; they are limited by age and may not run if they will be 70 on the day they would have been sworn into the office they are seeking. As a result, when a judge must retire depends strictly on his or birth date and the date of his or her election (re-election) or appointment. The retirement age for the state's judges is established in the Ohio Constitution and consequently, voters need to approve a constitutional amendment to make this change.

If approved, the measure would increase the mandatory retirement age for all judges in the state from 70 to 75 years. If the issue fails, 72 of Ohio's 718 judges would be prevented from running for new terms, according to statistics provided by the Ohio Supreme Court.

State Issue 1. The Ohio Constitution, Article IV, Section 6 paragraph C states: "No person shall be elected or appointed to any judicial office if on or before the day when he shall assume the office and enter upon the discharge of its duties he shall have attained the age of seventy years." This section was last amended on November 6, 1973 by Ohio voters.

Issue 1 proposes to:

- (1) Increase the maximum age for assuming elected or appointed judicial office from seventy to seventy-five;
- (2) Eliminate the General Assembly's authority to establish courts of consolidation;¹ and
- (3) Eliminate the Governor's authority to appoint members to the Supreme Court Commission.²

¹ Issue 1 proposes to repeal Article IV, Section 19 of the Ohio Constitution. There are currently no courts of consolidation in Ohio and none have ever been established.

Mr. Ryan Augsburger
September 12, 2011
Page 2 of 2

If approved, the amendment would take effect immediately.

Background. The late Chief Justice Moyer was a long-time supporter of increasing the mandatory retirement age for Ohio's judges and Representative Matt Huffman (R-Lima), the House Majority Floor Leader, has sponsored two different pieces of legislation over the past few years to facilitate debate on this topic.

Rep. Huffman's most recent effort was House Joint Resolution 1 ("HJR 1")³ and proponents of the retirement age change included: Ohio Supreme Court Chief Justice Maureen O'Connor, the Ohio Judicial Conference, the Ohio State Bar Association, and the Association of Municipal/County Judges. The Ohio Prosecuting Attorneys Association publicly opposed the measure. Supporters argued that the quality of life and life expectancy rates have improved significantly over the past thirty to forty years and as a result, people are still sound mentally, physically, and intellectually at 70 years of age. The Ohio Supreme Court also identified a number of ways to remove a judge if there are concerns about a particular judge's ability to serve. Besides the normal election cycle where the public can decide, there are both procedural and constitutional methods for the removal of a judge including impeachment in the General Assembly.

According to research provided by Rep. Huffman during the legislative discussion, 18 states have no age limit.⁴ Four states set judicial retirement at age 72;⁵ seven states at age 75;⁶ and one state – Vermont – at age 90. The following twenty states, including Ohio, set judicial retirement at age 70: Alabama, Alaska, Arizona, Connecticut, Florida, Hawaii, Kansas, Louisiana, Maryland, Massachusetts, Minnesota, Missouri, New Hampshire, New Jersey, New York, Pennsylvania, South Dakota, Virginia, and Wyoming.

As previously noted, 10% of Ohio's judges will be impacted if Issue 1 fails. Ohio Supreme Court Justices Paul Pfeifer and Judith Lanzinger both will turn seventy before their terms expire, and consequently, will be prohibited from serving another term on the high court if voters don't approve Issue 1.

HJR 1 was approved by the Ohio General Assembly in June 2011 and will be considered by Ohio voters via Issue 1 on November 8, 2011.

² Issue 1 proposes to repeal Article IV, Section 22 of the Ohio Constitution. The Supreme Court Commission has not been utilized since 1875.

³ Resolutions generally are formal expressions of opinion and wishes of the General Assembly and do not require approval of the Governor.

⁴ Arkansas, California, Delaware, Georgia, Idaho, Kentucky, Maine, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Rhode Island, Tennessee, West Virginia, and Wisconsin.

⁵ Colorado, Iowa, North Carolina, and South Carolina.

⁶ Illinois, Indiana, Michigan, Oregon, Texas, Utah, and Washington.