

## A MODEST PROPOSAL: RAISE THE MANDATORY JUDICIAL RETIREMENT AGE

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### I. INTRODUCTION

Two decades ago, I was asked to prepare an article for publication in a special edition of the *Florida Bar Journal* dedicated to the 1997 Constitution Revision Commission. At the time, I was a practicing lawyer with a large firm, was active in the Appellate Practice and Advocacy Section<sup>1</sup> of The Florida Bar, and had worked for and with appellate judges since graduating from law school. I had also recently read Judge Richard Posner's book, *Ageing and Old Age*,<sup>2</sup> which provided thoughtful and sometimes provocative ideas about the consequences and legal challenges facing an aging U.S. population. Having worked in private practice with highly competent septuagenarian lawyers, many being former judges, my sense was that Florida's mandatory retirement age of seventy—established in 1972—was out of balance with modern society, increasingly so due to growing lifespans and the dominant cerebral nature of the act of judging.<sup>3</sup> Born was the idea to write an article about raising the mandatory retirement age for Florida state judges, entitled “In Praise of Older Judges: Raise the Mandatory Retirement Age?”<sup>4</sup> The article surveyed the arguments for and against raising the mandatory retirement age, the former overwhelmingly

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<sup>1</sup> *The Appellate Practice Section of the Florida Bar*, FLA. B., <http://www.flabarappellate.org/about.asp> (last visited Nov. 22, 2016) (commonly now known as simply the “Appellate Practice Section”).

<sup>2</sup> RICHARD A. POSNER, *AGING AND OLD AGE* 1, 289-319 (1995).

<sup>3</sup> FLA. CONST. art. V, § 8 (stating that the constitution adopted section 8, which includes the seventy-year age maximum, in 1972).

<sup>4</sup> See Scott D. Makar, *In Praise of Older Judges: Raise the Mandatory Retirement Age?*, 71 FLA. B.J. 48, 48 (1997) [hereinafter *In Praise of Older Judges*].

supporting an upward shift.<sup>5</sup> Those arguments included the nature of judicial work, increased longevity, technological developments, and demographic considerations.<sup>6</sup> Twenty years have passed, yet these same factors strongly suggest that setting the judicial retirement bar at seventy is still too low and in need of modest revision.

## II. MANDATORY RETIREMENT AGE AND JUDICIAL ELIGIBILITY

### A. Nature of Judging

On the first factor, nothing has changed in the past two decades to undermine the conclusion that judges can creditably serve into their seventies and beyond.<sup>7</sup> The nature of judicial work still involves cerebration, discernment, and ultimately sound judgment. Many, if not most, judges and justices who are required to retire due to age do not simply drop out of the work force, their minds having lost the capacity for legal reasoning and keen insights.<sup>8</sup> Instead, many continue serving as senior judges, and many join law firms or set up their own practices, oftentimes not hanging up their spurs until their eighties.<sup>9</sup> As Judge Posner noted, judging is the “nation’s premier geriatric occupation,”<sup>10</sup> a proposition that continues to be true. It is also an activity where performance peaks later in life, a “late peak, sustained” activity.<sup>11</sup> This peak in the nature of judicial work lends creditability and “great distinction, at advanced ages.”<sup>12</sup> Examples illustrate the strength in

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 49. Other arguments for increasing the mandatory requirement age are to avoid forcing out productive judges more frequently than senile judges, a five-year increase in life expectancy since the adoption of mandatory retirement at seventy, gender and racial demographics that limit those with higher life expectancies than the average, and an increase in technological developments that aid in promoting longer life expectancy. *Id.*

<sup>7</sup> NAT’L CTR. HEALTH STATISTICS, HEALTH, UNITED STATES, 2015: WITH SPECIAL FEATURE ON RACIAL AND ETHNIC HEALTH DISPARITIES 37 (2016). Contrarily, the life expectancy as of 2014 has increased to 78.8 years—an increase from 75.8 years since 1992. *Id.* (providing statistics regarding the life expectancy as of 2014).

<sup>8</sup> POSNER, *supra* note 2, at 180.

<sup>9</sup> *See, e.g.,* John G. White III, *Is 70 the New 60?*, 83 FLA. B.J. 8, 10 (2009).

<sup>10</sup> POSNER, *supra* note 2, at 180.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

great distinction at a later age: Justice Oliver Wendell Holmes, one of the most commonly cited U.S. Supreme Court Justices in history, retired in 1899 at the age of ninety; Justice Brandeis, one of the most influential U.S. Supreme Court Justices, retired in 1939 at the age of eighty-two; Justice Learned Hand, the lower-court judge quoted most often by the Supreme Court of the United States, retired in 1951 at the age of seventy-nine.<sup>13</sup> More importantly, looking at the current Justices of the Supreme Court of the United States illustrates great distinction at a later age: Justice Breyer is currently seventy-nine years old, Justice Kennedy is eighty-one years old, and Justice Ginsburg is eighty-four years old.<sup>14</sup> The late Justice Scalia was still actively serving at the age of seventy-nine.<sup>15</sup> Judge Gerald Bard Tjoflat of Jacksonville, Florida, is the oldest serving active appellate judge in the federal judiciary, recently turning eighty-seven.<sup>16</sup>

Research also supports Justice Posner's assertion that judging is a late peak activity, sustained at a late age.<sup>17</sup> "Crystallized intelligence" studies, concerning skills acquired through experience and education (including verbal ability, inductive reasoning, and judgment), support the idea that judicial capabilities increase with age.<sup>18</sup> These studies indicate that a more mature brain is "especially well equipped" to create a solution to a problem by recalling relevant information and past experiences.<sup>19</sup> Septuagenarian judges, who have acquired much information and great amounts of experience, are well qualified to make judgments about the application of legal principles. These more-experienced judges would have the greatest crystallized intelligence

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<sup>13</sup> See *In Praise of Older Judges*, *supra* note 4.

<sup>14</sup> *Biographies of Current Justices of the Supreme Court*, SUP. CT. U.S., <https://www.supremecourt.gov/about/biographies.aspx> (last visited Nov. 28, 2016).

<sup>15</sup> *Biography of Associate Justice Antonin Scalia*, SUP. CT. U.S., <https://www.supremecourt.gov/about/biographyScalia.aspx> (last visited Nov. 28, 2016).

<sup>16</sup> Daniel S. Bowling III, *Gerald Bard Tjoflat: A Profile*, 11TH CIRCUIT HISTORICAL NEWS 18, 18-21 (2014), [http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=6014&context=faculty\\_scholarship](http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=6014&context=faculty_scholarship).

<sup>17</sup> Patricia Cohen, *A Sharper Mind, Middle Age and Beyond*, N.Y. TIMES (Jan. 19, 2012), <http://www.nytimes.com/2012/01/22/education/edlife/a-sharper-mind-middle-age-and-beyond.html>.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* (citing GENE D. COHEN, *THE MATURE MIND: THE POSITIVE POWER OF THE AGING BRAIN* 2 (2006)).

skills of inductive reasoning and judgment—those necessary for analyzing and deciding cases. They can be expected to have a substantial stock of productive years even after attaining age seventy. “As one prominent scholar and jurist has noted: ‘The remarkable thing about judges . . . is not that they hang on to their jobs to such advanced ages but that they perform them creditably, and indeed sometimes with great distinction, at advanced ages.’”<sup>20</sup> The great accomplishments and continued capabilities of older and more experienced judges have been acknowledged historically and researched recently, providing little basis for denying the future Holmes, Brandeis, or Learned Hand from sitting on Florida courts.<sup>21</sup>

### B. Longevity

Forty-four years have passed since the mandatory retirement age of seventy was adopted, yet longevity has continued to increase.<sup>22</sup> At the time the mandatory retirement age of seventy was adopted in 1972, the average life expectancy of men and women of all races at birth was approximately 70.75 years.<sup>23</sup> Twenty-five years later, at the time of my 1997 article, the data for 1992 showed that “this life expectancy had increased to 75.8 years, reflecting an increase of approximately five years.”<sup>24</sup> As of 2014, the average life expectancy for men and women of all races at birth was 78.8 years, reflecting a three-year increase beyond the 1997 level.<sup>25</sup> In other words, since 1972 when the mandatory retirement age of seventy was instituted, life expectancy has gone from 70.75 to 78.8, an increase on average of *eight years* and 11.4% overall for men and women of all races.

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<sup>20</sup> See *In Praise of Older Judges*, *supra* note 4 (citing POSNER, *supra* note 2, at 180).

<sup>21</sup> See *supra* notes 14-17 and accompanying text.

<sup>22</sup> See U.S. DEP’T HEALTH & HUM. SERV.’S, HEALTH, UNITED STATES, 2014: WITH SPECIAL FEATURE ON ADULTS AGED 55-64 4 (2015), <http://www.cdc.gov/nchs/data/hus/hus14.pdf> (providing data from 2014 concerning the increase in life expectancy) [hereinafter WITH SPECIAL FEATURE].

<sup>23</sup> See U.S. DEP’T HEALTH & HUM. SERV.’S, VITAL STATISTICS OF THE UNITED STATES, 1992: LIFE TABLES 2 (1996), [https://www.cdc.gov/nchs/data/lifetables/life92\\_2.pdf](https://www.cdc.gov/nchs/data/lifetables/life92_2.pdf) [hereinafter LIFE TABLES].

<sup>24</sup> *In Praise of Older Judges*, *supra* note 4 (citing LIFE TABLES, *supra* note 23).

<sup>25</sup> See U.S. DEP’T HEALTH & HUM. SERV.’S, HEALTH, UNITED STATES, 2015: WITH SPECIAL FEATURE ON RACIAL AND ETHNIC HEALTH DISPARITIES 4 (2016), <http://www.cdc.gov/nchs/data/hus/hus15.pdf>.

This increase is eye opening, as is the increase in life expectancy of those who reach older ages.<sup>26</sup> Life expectancies increase as a person ages, meaning that persons who live longer are expected to live longer than the average life expectancy at birth.<sup>27</sup> For instance, “persons reaching age 65 in 1992 could expect to live to 82.5 years of age. In contrast, in 1972 a 65-year-old could expect to live to 80.”<sup>28</sup> This two and one-half year differential has continued to increase over the past twenty years.<sup>29</sup> As of 2014, persons reaching age sixty-five could expect to live another 19.3 years, meaning up until age 84.3, an increase of over four years from the 1972 level.<sup>30</sup>

By 1997, “judges of all races and genders c[ould] expect to live more than 10 years beyond the current mandatory retirement age of 70.”<sup>31</sup> That conclusion is strengthened by the current data. Because judges, on average, are appointed or elected later in life, they can be expected to have longer life expectancies; for those who reach their midsixties, their life expectancies reach well into their early to mideighties.<sup>32</sup> The increases in life expectancy and longer life expectancies for those who reach their midsixties yields a significant shift beyond what were considered age limitations in the past.

In addition to a longer life expectancy, especially for those already serving on the judiciary in their midsixties, research shows that this increase in longevity coincides with an increase in cognitive functions.<sup>33</sup>

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<sup>26</sup> JENNIFER M. ORTMAN ET AL., AN AGING NATION: THE OLDER POPULATION IN THE UNITED STATES 4 (2014), <https://www.census.gov/prod/2014pubs/p25-1140.pdf>.

<sup>27</sup> *Id.*

<sup>28</sup> *In Praise of Older Judges*, *supra* note 4 (citing *Sixty-Five Plus in the United States*, CENSUS.GOV, <https://www.census.gov/population/socdemo/statbriefs/agebrief.html> (last visited Nov. 3, 2016)).

<sup>29</sup> *Compare Sixty-Five Plus in the United States*, *supra* note 28 (discussing how the life expectancy steadily increased from forty-seven years old in 1900 to seventy-six years old in 1991), *with* ORTMAN ET AL., *supra* note 26 (showing the life expectancy for the elderly has increased tremendously since 1972).

<sup>30</sup> *Calculations: Life Expectancy*, SSA.GOV, <https://www.ssa.gov/planners/lifeexpectancy.html> (last visited Dec. 31, 2016).

<sup>31</sup> *In Praise of Older Judges*, *supra* note 4.

<sup>32</sup> ORTMAN ET AL., *supra* note 29, at 3; *Calculations: Life Expectancy*, *supra* note 30.

<sup>33</sup> Jocelyne de Rotrou et al., *Does Cognitive Function Increase over Time in the*

In a study conducted by Cardiff University, spanning from 1991 to 2013, contemporary octogenarians performed similar to former samples of septuagenarians.<sup>34</sup> This led the researchers to conclude that there may be a shift in cognitive functions due to an “increase in life expectancy and life span in good health.”<sup>35</sup> The substantial, if not dramatic, rise in life expectancies and capabilities for those in the judiciary continues to support raising the mandatory retirement age.

### C. *Technology and Staffing*

In the last fifty years, federal court caseloads have increased nearly fourfold and continue to increase.<sup>36</sup> Greater technology and staffing has enabled judges to work more efficiently than in previous decades,<sup>37</sup> and this expansion of the use of technology and staffing enables older judges to remain productive past seventy.<sup>38</sup> An increased mandatory retirement age need not reduce the quality or quantity of judicial output. On the contrary, an experienced judge’s greater familiarity with courtroom processes and technologies would likely either maintain or increase judicial output. The increase in efficiencies makes it even easier than it has been in previous decades for older judges to remain productive.

Judicial administration and caseload processing have benefitted from increased efficiencies in the past two decades due to law-related technologies and more tech-savvy staff.<sup>39</sup> Courts now have electronic filing, legal research is conducted through online databases, and case management is increasingly electronic.<sup>40</sup> Books and physical libraries

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*Health Elderly?*, PLOS ONE (Nov. 11, 2013), <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0078646>.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Judiciary Embraces Efficiency, House Is Told*, USCOURTS, <http://www.uscourts.gov/news/2016/07/06/judiciary-embraces-efficiency-house-told> (last visited Nov. 22, 2016).

<sup>37</sup> Bernice B. Donald & N. Chase Teeples, *Not Your Father’s Legal Profession: Technology, Globalization, Diversity, and the Future of Law Practice in the United States*, 44 U. MEM. L. REV. 645, 649 (2014).

<sup>38</sup> *In Praise of Older Judges*, *supra* note 4, at 48-49.

<sup>39</sup> *Judiciary Embraces Efficiency, House Is Told*, *supra* note 36.

<sup>40</sup> Donald & Teeples, *supra* note 37.

have been replaced by electronic ones; law clerks and staff attorneys increasingly do all their work electronically through their court's computer networks and online research services.<sup>41</sup> This has saved time and energy that had previously been spent on manually filing cases, manually sifting through books in physical libraries, and manually checking and reviewing physical files to review cases.<sup>42</sup>

Courts have risen to the challenge of increased caseloads, as they utilize these electronic systems to “save time, money, and human resources.”<sup>43</sup> Additionally, “judges are now in a much better position to make accurate decisions due to the greatly improved access to the multitude of documents filed in many cases.”<sup>44</sup> While the act of judging still entails substantial reading and time for reflection, the use of technology and trained staff continues to make adjudication more efficient for judges of all ages, including those in their seventies and beyond.

#### D. Florida's Demographics

Florida continues to have the highest percentage (nineteen percent)—and the second largest population—of persons sixty-five and over.<sup>45</sup> This elderly population continues to grow at a rate exceeding population growth generally.<sup>46</sup> Indeed, the “nation's only county with a majority of the population age sixty-five or older remains Sumter County, Florida, where 54.8 percent had reached retirement age in 2015, up from 53.0 percent in 2014.”<sup>47</sup> The existence in Florida of an “elderly and politically active electorate”<sup>48</sup> makes it likely that proposing an increase in the mandatory retirement age will more likely

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<sup>41</sup> *Id.* at 651.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 650.

<sup>44</sup> *Id.*

<sup>45</sup> *QuickFacts: Florida*, U.S. CENSUS BUREAU, <http://www.census.gov/quickfacts/table/PST045215/12> (last visited Nov. 22, 2016).

<sup>46</sup> *Id.* (showing 19.4% as of July 1, 2015 as compared to 17.3% as of Apr. 1, 2010).

<sup>47</sup> *See Only County in Nation with Majority of Population Age 65 or Older*, U.S. CENSUS BUREAU (June 23, 2016), <https://www.census.gov/newsroom/press-releases/2016/cb16-107.html>.

<sup>48</sup> *In Praise of Older Judges*, *supra* note 4.

be viewed with favor.

Although Florida remains one of the top states with the highest percentages of persons over sixty-five, many other states—with smaller and less active sixty-five and older populations—have failed to implement mandatory retirement ages<sup>49</sup> or have a mandatory retirement age greater than seventy.<sup>50</sup> Even states with lower percentages of septuagenarians are moving towards raising or eliminating judicial age limits.<sup>51</sup> Last year, the Virginia Legislature increased the retirement age from seventy to seventy-three, while efforts have also been made in Indiana, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, Utah, and Wyoming;<sup>52</sup> Oregon, Pennsylvania, and Alabama voters decided this year whether the age limit on their mandatory retirement age will either be lifted or repealed.<sup>53</sup> Pennsylvania voted to raise the age limit of judges from seventy to seventy-five by a narrow margin.<sup>54</sup> Alabama also raised the age limit to seventy-five; however, the new limit only applies “to one county.”<sup>55</sup> Oregon defeated the measure to increase the age, meaning “[i]t will stay at 75.”<sup>56</sup> The issue of raising or removing mandatory age requirements for judges throughout the country has been presented on the ballot

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<sup>49</sup> William E. Raftery, *Increasing or Repealing Mandatory Judicial Retirement Ages*, NAT'L CTR. ST. CTS., <http://www.ncsc.org/sitecore/content/microsites/trends/home/Monthly-Trends-Articles/2016/Increasing-or-Repealing-Mandatory-Judicial-Retirement-Ages.aspx> (last visited Nov. 28, 2016) (explaining that only thirty-two states, plus the District of Columbia, have a mandatory retirement age).

<sup>50</sup> Malia Reddick, *Mandatory Retirement Ages for Judges: How Old Is Too Old to Judge?*, INST. ADVANCEMENT AM. LEGALSYS. (Nov. 22, 2016 10:01 PM), <http://iaal.sdu.edu/blog/mandatory-retirement-ages-judges-how-old-too-old-judge>. See also, Raftery, *supra* note 49 (explaining while most states' mandatory judicial retirement age is between seventy and seventy-five, Vermont, for example, has a retirement age of ninety).

<sup>51</sup> Reddick, *supra* note 50.

<sup>52</sup> *Id.*

<sup>53</sup> Alan Greenblatt, *How Old is Too Old to Be a Judge? Voters Get to Decide.*, GOVERNING ST. & LOCALITIES (Nov. 9, 2016), <http://www.governing.com/topics/elections/gov-judicial-retirement-2016-state-ballot-measures.html>.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

eleven times since 1995.<sup>57</sup> Florida's demographics should foster great support for this movement, joining the many states nationwide attempting to limit or remove the mandatory judicial retirement age.

### *E. The Politics*

Criticism surrounding the mandatory retirement age for judges dates back to founding times.<sup>58</sup> Alexander Hamilton, in *Federalist No. 79*, noted New York's mandatory retirement age of sixty: "The constitution of New York . . . has taken a particular age as the criterion of inability. No man can be a judge beyond sixty."<sup>59</sup> Even in 1788, when life expectancy was only thirty-five, Hamilton expressed the arbitrariness and unpopularity of implementing a mandatory judicial retirement age: "An attempt to fix the boundary between the regions of ability and inability, would much oftener give scope to personal and party attachments and enmities, than advance the interests of justice, or the public good."<sup>60</sup> Hamilton continued, "I believe there are few at present who do not disapprove of this provision. There is no station, in relation to which it is less proper than to that of a judge. The deliberating and comparing faculties generally preserve their strength much beyond that period."<sup>61</sup> "[L]imitations of this sort have little to recommend them."<sup>62</sup>

Proponents of mandatory judicial retirement age for judges, however, argue that imposing a mandatory age allows for bench revitalization and prevents jurists "incapacitated by dementia."<sup>63</sup> While the adoption of mandatory judicial age retirement provisions had the

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<sup>57</sup> *Id.*

<sup>58</sup> See generally ALEXANDER HAMILTON ET AL., THE FEDERALIST 410 (George W. Carey & James McClellan eds., 2001), [http://files.libertyfund.org/files/788/0084\\_LfeBk.pdf](http://files.libertyfund.org/files/788/0084_LfeBk.pdf) (stating that since 1788 mandatory retirement of judges has been criticized and unpopular).

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> Greenblatt, *supra* note 53; see also Raftery, *supra* note 49 (stating that opponents of increasing or eliminating the mandatory retirement age believe it "help[s] the judiciary by injecting new ideas and new judges into the mix").

intent to avoid senile judges sitting on the bench,<sup>64</sup> Florida's Constitution has alternative methods for removing judges including a Judicial Qualifications Commission, article V, section 12, and impeachment, article III, section 17.<sup>65</sup> These alternative methods are more appropriate, considering that empirical evidence "does not establish that advanced age and senility are synonymous."<sup>66</sup> Even still, arguments promoting mandatory retirement in order to avoid senile judges have continued since Hamilton's time,<sup>67</sup> although mental capabilities have been shown to vary per individual and without correlation to age.<sup>68</sup>

Of course, an increase in the mandatory retirement age is likely to cause incumbent judges to remain active longer, thereby reducing the number of openings available for younger, aspiring judges. This effect will likely be greater in appellate courts because fewer trial judges serve past the age of sixty.<sup>69</sup> Allowing experienced judges to remain past the current mandatory retirement age will increase the supply of judges and potential judges, thereby providing a modest boost to competition for judicial positions, which is a current area of concern in Florida, according to Chief Justice Labarga of the Florida Supreme Court.<sup>70</sup> Labarga states that "We lost a tremendous amount of judges throughout the state, . . . we need to keep what we have, and we need to attract very talented people."<sup>71</sup> In addition to forced retirement at seventy, the judicial pay plateau of the past decade has also contributed to loss of

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<sup>64</sup> *Id.*

<sup>65</sup> FLA. CONST. art. V, § 12; *Id.* art. III, § 17.

<sup>66</sup> Darlene M. Severson, *Age Discrimination Law—Mandatory Retirement of Judges: Law and Policy—Gregory v. Ashcroft*, 898 F.2d 598 (8th Cir.), cert. granted, 111 S. Ct. 507 (1990), 17 WM. MITCHELL L. REV. 858, 859 (1991); see also *supra* notes 31-33 and accompanying text.

<sup>67</sup> ALEXANDER HAMILTON ET AL., *supra* note 58 ("The want of a provision for removing the judges on account of *inability*, has been a subject of complaint.") (emphasis added); see also Severson, *supra* note 66.

<sup>68</sup> See *supra* notes 16-18 and accompanying text.

<sup>69</sup> ARTICLE V TASK FORCE, FINAL REPORT 89 (1995).

<sup>70</sup> Elyssa Cherney, *Florida Supreme Court chief justice says judges in dire need of better pay*, ORLANDO SENTINEL, (July 19, 2015, 6:56 PM), <http://www.orlandosentinel.com/news/breaking-news/os-jorge-labarga-judges-pay-increase-20150719-story.html>.

<sup>71</sup> *Id.*

judges.<sup>72</sup> State Senator David Simmons, who supports a judicial pay increase in Florida, stated that “we do need to attract and retain the best and the brightest” judges.<sup>73</sup> Raising or eliminating the mandatory judicial retirement age aids in this endeavor.

Moreover, raising the mandatory retirement age to at least seventy-three is a no-brainer. Because of politics at the time of its adoption, the mandatory retirement age of seventy excludes judges who turn seventy in the second half of their six-year terms.<sup>74</sup> This category of judges can serve out their full six-year terms, serving potentially until age seventy-three.<sup>75</sup> It makes little sense to allow some judges to serve until age seventy-three but restrict others.

Finally, a stand-alone amendment that raises the retirement age could be made more politically attractive by concurrently raising the minimum qualification age for all courts: county, circuit, district, and supreme. Currently, an attorney who is a Florida Bar member for five years is eligible for a county or circuit court judgeship; ten years’ bar membership is required for district courts and the supreme court.<sup>76</sup> To counter concerns about overly lengthy judicial tenures, minimum age requirements of twenty-five, thirty, thirty-five, and forty (or some other combination, such as thirty, thirty-five, forty, and forty-five) could be imposed for the county courts, circuit courts, district courts, and supreme court, respectively.

### III. CONCLUSION

Twenty years have passed since I last wrote about raising the mandatory retirement age, the last five of which I have served as an appellate judge in Florida.<sup>77</sup> My observation is that the combination of the current mandatory retirement age and a judicial pay plateau over the past ten years has resulted in productive, well-regarded judges leaving

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<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> See *In Praise of Older Judges*, *supra* note 4, at 48 n.5.

<sup>75</sup> *Id.*

<sup>76</sup> FLA. CONST. art. V, § 8.

<sup>77</sup> See *In Praise of Older Judges*, *supra* note 4; *Judge Scott Makar*, FLA. FIRST D. CT. OF APPEAL, <http://www.1dca.org/judges/makar.html> (last visited Nov. 22, 2016).

the judiciary more frequently and at younger ages; retaining the better judges becomes problematic due to greater professional opportunities outside the judiciary. And the idea that the mandatory retirement age of seventy is needed to push out judges before they become senile now seems quaint, particularly with an active Judicial Qualifications Commission that polices the judiciary for potential problems, including judges with reduced mental capacity. At a minimum, the mandatory retirement age should be raised to seventy-three because the Florida Constitution already allows some judges to serve until that age. Due to increased longevity, law-related technology that increases efficiency, and Florida's older demographics, a mandatory retirement age of seventy-five is warranted.