

**SUBJECT:** Permitting judges reaching mandatory retirement age to finish their terms

**COMMITTEE:** Judiciary — favorable, without amendment

**VOTE:** 7 ayes — Hartnett, Homer, Hopson, Alonzo, R. Cook, Gonzales, Goolsby

0 nays

2 absent — Hughes, Krusee

**WITNESSES:** For — Chas. R. Holcomb; Charles Mitchell, Texas Association of District Judges

Against — None

On — Maria Ramón, Office of Court Administration

**BACKGROUND:** Art. 5, sec. 1-a(1) of the Texas Constitution requires a judge to leave the bench when the judge turns 75 or such earlier age, not less than 70, that the Legislature may prescribe as retirement age. The Legislature has never set such an age, and the Comptroller's Office stops paying a judge's salary upon that judge's 75th birthday.

**DIGEST:** HJR 36 would allow judges who had reached the mandatory age of retirement to finish out their terms.

The proposal would be presented to the voters at an election on Tuesday, November 6, 2007. The ballot proposal would read: "The constitutional amendment permitting a justice or judge who reaches the mandatory retirement age while in office to serve the remainder of the justice's or judge's current term."

**SUPPORTERS SAY:** Allowing judges to finish out their elected terms would fulfill the intent of the electorate. Judges are elected to serve out their terms, and voters intend for them to do so. If a judge will reach retirement age before the end of the judge's elected term and the voters decide that the judge's experience and abilities merit election or re-election, then the judge should be allowed to serve out the full term.

Forcing judges to retire mid-term creates disruption in the efficient disposition of cases. Cases must be placed on hold while a temporary judge is selected and may again be delayed if a new elected judge takes over from the appointed replacement. Allowing judges to fulfill their terms would create an efficient and predictable succession process.

HJR 36 also would promote long-term judicial service because judicial retirement is based on the length of service and pay rate. Incentives like this are critical because most judges could earn substantially more in private practice.

Mandatory retirement is not the only mechanism available to protect the courts from incompetent judges, and it is unlikely that voters would reelect an incompetent judge. Additionally, the State Commission on Judicial Conduct exists to investigate reports of impropriety and incompetence and would remove judges who were unfit to serve.

HJR 36 would be a good compromise between those who espouse mandatory retirement and those who believe that it is arbitrary and unnecessary. The amendment would not eliminate mandatory retirement for judges, but would just extend the service of these judges until the end of their term. Retired judges often serve as visiting judges, so mandatory retirement does not necessarily remove these experienced jurists from the bench in any event.

**OPPONENTS  
SAY:**

Current law provides a bright line for judicial retirement. One reason for mandatory retirement is that aging judges can result in an increasingly ineffective judiciary that can be difficult to remove because of the protections of incumbency. HJR 36 would blur this bright line by eroding the important policy goal of ensuring a vibrant and able judiciary. Allowing judges to serve out their terms past their 75th birthdays would delay the entrance of new judges who were potentially more in tune with modern trends and developments in the law.

**OTHER  
OPPONENTS  
SAY:**

HJR 36 would not go far enough. The federal government and many states are abolishing many mandatory retirement schemes altogether. With other protections in place to police professional quality, mandatory retirement increasingly is seen as an antiquated solution. Instead of allowing judges to finish their terms, Texas simply should allow the voters to decide who is fit to serve and abolish mandatory retirement for judges.