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News Coverage on Mandatory Retirement for Judges

Too Old to Judge? Albany Reconsiders

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ALBANY — At 74, Justice Sidney F. Strauss loves his job and has no desire to stop working. But at the end of 2014, he may be forced into his golden years by a mandatory retirement rule.

“Fifty years ago, when the life expectancy was 61, if you said, ‘You want to work to 76?’ They’d say, ‘You should live so long,’ ” said Justice Strauss, a State Supreme Court judge in Queens. “But as long as I am physically and mentally capable of doing this, I want to keep doing this.”

Each year, judges across New York and the rest of the country grudgingly hang up their robes because of these rules, many of which were inscribed in state constitutions well before the eras of penicillin, cholesterol drugs and hip replacements. More than 30 states and the District of Columbia have an age limit on jurists, according to the [National Center for State Courts](#): [4] 70 is the limit in many states; in Vermont, it is an optimistic 90.

In New York, judges have to retire at either 70 or 76, depending on their courts. But this year, a reprieve seems possible.

The Legislature has been considering a bill that would amend the State Constitution, if approved by voters, to extend the retirement age to 80 for hundreds of judges statewide, including the chief judge of the Court of Appeals, [Jonathan Lippman](#) [5].

“The 70-year-old that existed in the 1890s is not the 70-year-old of today,” said Assemblywoman Helene E. Weinstein, Democrat of Brooklyn, who is sponsoring the bill.

Ms. Weinstein’s measure has already passed the Assembly and could be considered by the full

Senate as soon as next week.

Still, despite widespread agreement among judges that the age limit is archaic, change often comes slowly in Albany.

In recent weeks, a Republican state senator introduced a second measure — currently in committee — which differs from Ms. Weinstein's, and the debate has become clouded by suggestions of political favors and gamesmanship.

Some in the state's judicial ranks have questioned Ms. Weinstein's bill, saying it unfairly favors the high-level judges on the State Supreme Court and the Court of Appeals. Others counter that forced retirement encourages diversity, as older, white judges retire and are replaced by younger ones from minority groups.

Then there is the United States Supreme Court, which has no retirement rule at all. When Justice John Paul Stevens [stepped down in 2010](#) [6], he was 90.

If the legislative conflicts in Albany can be worked out, the bill would still face voters, since it would change the State Constitution. But the record of such votes is decidedly against elderly judges. Recent efforts to raise judges' retirement ages were soundly defeated in Arizona and Ohio; New York voters said no in 1983.

All of which makes judges — of an age — uneasy.

"This is one of the most pressing issues for all of our members regardless of our age," said [Justice Phyllis Orlikoff Flug](#) [7], who is 74 and president of the Supreme Court Association of Justices of the City of New York. "The clock is always ticking."

Ms. Weinstein's bill has already sailed through two separately elected Assemblies — a prerequisite for a constitutional amendment. The State Senate resoundingly approved it once, and, in the spring, seemed likely to do so again.

But in early May, State Senator John J. Bonacic, a Hudson Valley Republican and chairman of the Judiciary Committee, introduced a measure calling for a wider array of judges to have the option of working until age 74, including those overseeing county courts, surrogates' courts and courts of claims, among others. (Such judges must now leave the bench at 70.)

Under Mr. Bonacic's plan, judges on the Court of Appeals and State Supreme Courts would be allowed to work until 80, provided they were certified as competent every two years. Judges on the Court of Appeals, however, would be transferred after age 70, to a State Supreme Court.

But because the Bonacic bill would have to be passed by both chambers — twice, in separately elected sessions — and then approved by voters, the earliest that it could take effect would be 2016. And that would be too late for two judges on the Court of Appeals: Chief Judge Lippman, who turns 70 in 2015, and Judge Robert S. Smith, who turns 70 in 2014.

The fate of the two bills has caused some whispers in the Capitol because Mr. Lippman is

friendly with Sheldon Silver, the speaker of the Democrat-dominated Assembly. The two men grew up on the Lower East Side of Manhattan, where Mr. Silver still lives, and Mr. Silver was an ardent supporter of the judge's nomination as chief judge by Gov. David A. Paterson in 2009.

Chief Judge Lippman, who has established himself as a solid liberal voice, declined to comment.

But Mike Whyland, a spokesman for Mr. Silver, said the friendship between the speaker and the judge had nothing to do with the proposed extension of the retirement age. "This is a broad based, politics-neutral bill that covers many judges and will be voted on by the public," Mr. Whyland said, referring to the Weinstein measure.

Mr. Bonacic initially said he had offered his bill — which had passed the Senate once before, in 2011, but died in the Assembly — because he had heard "too many concerns from other judges that they are not included" in the Assembly version. But late last month, Mr. Bonacic suggested that he was leaning toward a compromise: allowing both bills to the Senate floor.

Still, he said, there was no consensus within the Republican conference in the Senate on the issue. "I am not so sure the people want judges serving until they are 80," he said.

Langdon Chapman, an aide to Senator Bonacic, added that his bill, and its longer legislative timetable, was not related to Mr. Lippman's looming retirement.

The prospect of any delays concerns Justice Eileen Bransten, past president of the Association of Justices of the Supreme Court of the State of New York, who said good judges were hard to find and sorely needed, particularly in an age of surging caseloads.

"You're not talking about someone needing to use a lot of physical labor," said Justice Bransten, who is 70 and presides in Manhattan. "I don't have to lift 25 pounds in order to use my mind."

Assemblywoman Weinstein pointed to a case where a "very vibrant" jurist was forced off the bench: Judith S. Kaye, longtime chief judge of the Court of Appeals, who stepped down in 2008 after turning 70.

In an interview, Ms. Kaye said she agreed that the retirement requirement should be changed.

"When the age was fixed at 70, we were at a time when it was really old," Ms. Kaye said. "Today, people are still very sharp and able — they are not statutorily decrepit."

On that point, most judges concur, including Justice Strauss, who said he "spent 38 years chasing after clients" in private practice, before being elected to the bench in 2002. Now, he said, he wants to keep holding court.

"It's a question of being able to get up in the morning and get dressed and go somewhere and be productive," he said. "I can contribute here."

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[4] <http://www.ncsc.org/>

[5] <http://www.nycourts.gov/ctapps/jlippman.htm>

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