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**Testimony before the**  
**Oregon Senate Judiciary**  
**February 17, 2014**  
**8:00 a.m.**  
**Re: SJR 4**

Hearing Room 343  
State Capitol.

Here is one for you, Merc!  
**Look Who was forced to retire**

From Oregon Legal Heritage  
A Life of Firsts  
*Mercedes Deiz was a trailblazer by choice*  
By Cliff Collins



*Mercedes Deiz was a person with two "firsts" attached to her name: first African American woman to be admitted to the Oregon Bar, and the first African American woman to serve on the Oregon bench.*

Some people become pioneers by accident, others by choice. Mercedes Deiz consciously chose to be a pioneer, seemingly at every step along her lengthy career. When she died in Portland Oct. 5, 2005 at age 87, Deiz left a long legacy of service to the Oregon State Bar and the profession, but also specifically to many individual lawyers, especially women and attorneys from ethnic minorities.

"Judge Deiz was a one-person affirmative action committee, welcoming and counseling Oregon's minority lawyers," wrote attorney Katherine H. O'Neil in 2000, when endorsing Deiz for the OSB's highest honor, the Award of Merit. "I do believe that each and every African-American lawyer who entered practice between 1970 and 1992 sat with Judge Deiz in her chambers, receiving a few hours or more of private tutoring in career development."

"Black has nothing to do with the color of the skin; it's a question of ethnicity," Deiz once said. "You are your race. A person has roots to whatever he or she comes from in one's ancestry. And I am a black lady."

Her self-identify was, again, a conscious choice, as she was of mixed racial descent, raised in an impoverished, polyglot Harlem neighborhood. Born Mercedes Frances Lopez in 1917 in New York City, she was the oldest of 10 children. Her mother was Czechoslovakian, and her father was black and born in Cuba. Though her family was poor, she said her parents insisted that their children frequent the library, and she grew up reading and visiting the city's free museums.

"My dad had much more of an influence on me (than my mother) in being an individualist," she is quoted as saying in *Images of Oregon Women*, a 1983 book by Ellen Nichols. "He insisted that each of his kids be unique to the best of our abilities."

Mercedes Deiz became the first black female lawyer in Oregon when she was admitted to the bar in 1960. In November 1969, then-Gov. Tom McCall appointed her as a district court judge, making her the first woman of color to become a judge in Oregon. That next May primary, Multnomah County voters elected her to the post outright, and she became the first black woman to be elected to the bench in Oregon. In 1972, she was encouraged to run for the Multnomah County Circuit Court, and in the general election, she defeated seven male challengers for the position.

"She saw her role in the right way — not just being the first, but making sure there were many more to follow her," Oregon Court of Appeals Judge Ellen F. Rosenblum told *The Oregonian* after Deiz's death.

"As a woman of color, she was always subjected to heightened scrutiny," wrote Multnomah County Circuit Court Judge Marilyn E. Litzenger, then-president of Oregon Women Lawyers, in support of Deiz's Award of Merit. "She responded with grace, humor and self-confidence. Her path-breaking example has convinced hundreds of others, male and female, that there is a place for them in the legal community. Her personal mentoring and encouragement of younger lawyers are legendary."

After graduating from high school at the age of 16, Deiz worked variously as a maid, theater usher, switchboard operator and ticket clerk, and completed three years at Hunter College of the City of New York before marrying. She helped organize women within her union of office employees. She and her husband held fund raisers to help pay for legal-action cases involving race. In 1948, after 12 years of marriage, she left her husband and took her 4-year-old son to Portland, where a brother lived. She recalled arriving by train with only \$12 to her name.

After being denied service in a Portland restaurant, Deiz became active in the local Urban League and the NAACP. "But she (was) discriminated against more often because of her gender than because of her race," Nichols wrote. "She was frustrated in several job-seeking attempts because — private sector or civil service — the jobs were restricted to males, even though she was qualified in every other respect." When she sought to advance at Bonneville Power

Administration, Deiz later recalled, the job posts read, "Men Only," or "Veterans Only." She held various jobs, including eventually working with the Internal Revenue Service, the BPA, and in a law firm as a legal assistant.

According to O'Neil, Deiz said that at an early age, she wanted to become a lawyer because she believed that the law was the forum to right wrongs. Nichols quoted Deiz's explanation for wanting to go to law school: "I really want to ... help people. And I can't see how to do it better than just being an advocate and speaking for them. I always wanted to do that."

While working with the IRS in Portland, she met fellow IRS worker Carl Deiz and married him in 1949. They raised three children. Her husband helped take care of the children while she attended Northwestern School of Law at night while working as a legal assistant. She finished fourth in her class. In a 1999 interview, she credited her husband with taking a large part in raising their children. "I am not a dependent woman," she said. "But I could not have done the things I did without Carl."

She continued her community activism, and practiced trial law for eight years — during which she said her clients were overwhelmingly white males, and she received many referrals from male attorneys — and served as an administrative law judge with the workers' compensation board for two years, before her appointment to the bench.

"As a judge, you have to be strictly impartial and eschew any perception of any kind of bias one way or another," she told Nichols. "But my sensitivities and concerns are always for working people; that's what I came from."

She also became an advocate for youth after spending much of her judgeship presiding over family law cases. Deiz served on the Governor's Committee on Children and Youth, and the Metropolitan Youth Commission. She was on the board of the National Association for Women Judges, of which she was a founding member.

Deiz also was a founding board member of Oregon Women Lawyers and actively involved in the National Bar Association, Oregon Minority Lawyers Association and the Owen Panner Inns of Court. At Harvard Law School, she taught trial techniques as a Woodrow Wilson Visiting Fellow, and in 1997, the school she attended as an undergraduate, Hunter College, awarded her an honorary doctorate degree.

She also did volunteer work within the bar, including after she was forced by law to retire in 1992 because of age, following her election to four six-year terms as a judge. Deiz served on the Oregon Supreme Court Task Force on Racial and Ethnic Issues in the Judicial System and on the Multnomah Bar Association's Status of Women Committee.

At the OSB, she was on the Public Service and Information Committee and the Press and Broadcasters Committee, and she chaired the Minor Courts Committee. For the Multnomah Bar Association, she served as secretary and treasurer. She also was a member of the American Bar Association, Queen's Bench, the American Judicature Society and the National Council of Juvenile and Family Court Judges.

Deiz's community and public service included work with many organizations devoted to civil rights and education. She lectured on the court system, rights of minorities, race and ethnic relations, women's rights and juvenile and family law. She was a 12-year board member of the National Center for State Courts, and a member of the Governor's Commission on Judicial Reform. She chaired the State Advisory Committee to the federal Civil Rights Commission, and vice-chaired the Urban League in Portland.

Her numerous awards included: the Northwestern School of Law Distinguished Alumna Award; the Chisolm Award for contributions to Oregon citizens; the March of Dimes' Oregon's Ten Outstanding Women; Oregon Women Lawyers' Mother of Achievement Award; the Association of Black Lawyers Distinguished Service on the Bench Award; the Urban League's Devotion to Concept of Equality Award and the Woman of Accomplishment Award.

Deiz and her husband, who survives her, enjoyed traveling abroad, according to *The Oregonian*, which added that she not only was adventurous in her career, but also in her leisure activities, such as paragliding in Mexico.

The OSB recognized her in 1992 with its Affirmative Action Award, and in 2000 — on the 40th anniversary of her admission to the bar — with the Award of Merit, the OSB's highest honor, which is "awarded in recognition of outstanding contributions to the bench, bar and community at large by attorneys who exhibit the highest standards of professionalism."

"From the time Mercedes Deiz tried her first case, in October 1960, until the present day, she has exemplified the qualities which make the very best lawyers: common sense, practicality, a quick wit, decisiveness, compassion, concern for the community and an abiding love and respect for the law," wrote Litzenger in 2000.

"In each of her 40 years as lawyer, judge and ... senior judge, (Deiz) ... made significant contributions towards public respect for the legal system," added O'Neil. "She has made a significant, positive difference in dozens and dozens of lawyers of color, and the legal careers of dozens and dozens of women lawyers."

**Editor's note:** Beatrice Cannady, erroneously reported to be the first female African-American attorney in Oregon by various sources including the Oregon Historical Society, never was admitted to the bar, but that didn't stop her from representing clients in court. Cannady, who

graduated from Northwestern School of Law in 1922, failed the bar examination five times. ... Cannady was a feisty and outspoken advocate for civil rights and successfully defended black children who had been denied attendance in Oregon public schools. Throughout her adult life, she worked to improve race relations and better living and educational conditions for blacks. In 1929 the Portland Council of Churches nominated her for the Harmon Award for outstanding contributions to race relations, and over the years she received much public acclaim for her efforts. It would be another 38 years before a black woman, Mercedes Deiz, would be admitted to the Oregon State Bar and become the state's first female African American attorney.

*Source: "Serving Justice: A History of the Oregon State Bar, 1890-2000."*

**ABOUT THE AUTHOR** *Cliff Collins is a Portland-area freelance writer and a frequent contributor to the Bulletin. © 2005 Cliff Collins*

# Look Who was not allowed on the ballot because of the Mandatory Retirement Provision



**AGNES MARIE PETERSEN, ESQUIRE**

Let the world know you as you are not as you think you should be, because sooner or later, if you are posing, you will forget the pose, and then where are you?

Fanny Brice

**The following is the material submitted during the campaign to the Clatskanie Chief**

1. Name: AGNES MARIE PETERSEN (nee Agnes Marie Thompson)
2. Age: My mother taught me, a lady never tells her age. I strive to be a lady.
3. Length of time resided in county: **Since I was born, in Houlton, Oregon.**

**I have lived in Columbia County, Oregon all my life. No other candidate has. I was born during the Great Depression at home in Houlton, Oregon. My schooling was in St Helens, Oregon and then I went to the University of Oregon for both undergraduate and law school. My ancestors came to Oregon in about 1850. We have been 5-7 generations in Oregon My deceased family members are buried in the Pioneer cemetery near Rosemont, Oregon City, and in the old Yankton cemetery . John Allan Petersen and I were married in Scappoose, more than 50 years ago. We raised all 4 of our beautiful children in Columbia County, Oregon -- 2 of the 4 live here now. My husband's ancestors settled in Buxton along with other Danish settlers. Later they moved to Deer Island, Oregon. John and I have lived in Deer Island all our married life.**

4. Occupation: **Practicing full-time Lawyer since 1960, same office same place more than 53 years.**

5. Educational background:

**St Frederic's grade School, St Helens, Oregon, graduated 1949  
St Helens High School, St Helens, Oregon, graduated 1953.**

**University of Oregon law school, graduated 1959. Phi Beta Kappa honors at the University of Oregon law school, with Doctorate of Jurisprudence -- practiced all aspects of criminal and civil law in St. Helens, Oregon from 1960 to the present.**

6. Other pertinent background information (Community service, previously held offices, other experience that qualifies you for position, etc.):

**I am admitted to practice before the following Courts :**

**United States Supreme Court;**

**United States District Court of Appeals, 9<sup>th</sup> Circuit;**

**United States District Court of Oregon;**

**Oregon Supreme Court ; Oregon Court of Appeals;**

**Oregon Tax Court, and all courts in the State of Oregon.**

**Community Service includes but is not limited to:**

**Elected member of the Oregon State Board of Bar Governors, and**

**Columbia River Public Utility District Board, and**

**St Helens School Board, the Columbia Education Service District and Port of St. Helens,**

**Member of the Oregon Judicial Fitness Commission, which is the Commission that**

**determines whether a Judge has violated the Code of Judicial Conduct. On it I sat as**

**Chair of the Commission in judgment upon the conduct of judges, including one**

**Oregon Supreme Court Justice.**

**Charter Member of Oregon Women Lawyers formed in 1989.**

**Oregon State President for the General Federation of Womens Clubs of Oregon 2010-2012**

7. Statement of Candidacy (why you are running for office, what you hope to accomplish, etc. - maximum 250 words):

**I filed to improve the quality of justice in Columbia County, Oregon. The Secretary of State accused me of being over 75 years of age and declared me not qualified because of age. The application form had no question about age on it. ORS 3.041 has no age qualification to run for Circuit Court Judge. Then the State refused to place my name in the voter's pamphlet even though I paid \$600.00 to be included in it. So I am running a write in campaign. The voter's Pamphlet says at page 15 that one right a voter has is to vote for whom the voter wishes, including adding a write-in for any position. The race is one where I seek votes as a write-in candidate and I will pursue a path of changing and asking the Courts to declare unconstitutional Oregon's discrimination toward Judges who reach their 75<sup>th</sup> birthday. Mercedes Diez, the first black woman Judge wanted to fight this back in 1991. Both Mercedes and I were charter members of Oregon Women Lawyers. Oregon Women Lawyers' Mission is to transform the practice of law and ensure justice and equality by advancing women and minorities in the legal profession. I am the most qualified person running for Position 3. Compare my qualifications with anyone else running for Position 3. My promise is to take age discrimination on when You see in me a candidate with the zeal, energy, drive and ability to fight this injustice in Oregon.**

**Sincerely, Agnes Marie Petersen.**



# Look who took on such a law and won!



**Cook County Circuit Judge William Maddux**

## **My poster Judge against Mandatory Retirement of Judges**

Forced retirement of Judge based upon the Illinois State Constitution was overturned as unconstitutional in Illinois in June, 2009. It is the case of Maddux v. Blagojevich, 233 Ill. 2d 508, 911 N.E.2d 979, 331 Ill.Dec. 749 (Ill., 2009). Appendix I.

**I called Judge Maddux on the phone in the Spring of 2014 to talk to him about the case and his work. He had retired from the bench on his own terms that Spring and was still of counsel in a large law firm in Chicago that had been his firm before he went on the bench. So he was still working at least 5 years after his case was heard. I called his office again on February 13, 2015 and sent him a copy of the notice I got to testify in this hearing. I also called him again and he told me he is still working and just got appointed as the trustee in an asbestos trust. He gave me permission to use his picture for this testimony.**

On June 18, 2009, the Illinois Supreme Court ruled that a state law requiring judges to retire at age 75 violated the Illinois state constitution and struck it down. The lead plaintiff in the case was Cook County Circuit Judge William Maddux, who argued that the law is unfair because it affects only sitting judges rather than, potentially, those elected at age 75 to serve on the bench.

The issue of whether a mandatory retirement age for judges is lawful has been debated for many years now in Hawaii. In 2006, voters in all four of Hawaii counties overwhelmingly refused to change the Hawaii state Constitution in 2006 to lift the requirement that state judges must retire by age 70. In 2008, the issue came up again when legislation was introduced unsuccessfully that would have amended the state Constitution so that judges were required to retire at 72 years of age or, in another bill, at age 80.

The mandatory retirement age of judges varies throughout the U.S. A number of states have no mandated retirement ages, while others range from 70-75 years old. The debate of whether or not

to lift retirement ages focuses on the removal of senile judges and providing opportunities to underrepresented minorities to become judges versus the retention of those who are experienced and knowledgeable in the field of law. The argument that retention of older judges potentially sacrifices the quality of decisions and competency of the judiciary has persisted.

However, there is increasing evidence that improved technology, increased life expectancy, staffing models and improved forms of communication make such argument less compelling today. On the federal level, where improvements in technology and staffing levels tend to occur before state court judiciaries, there are no mandatory retirement ages for judges. Nevertheless, federal judges often voluntarily invoke the “rule of 80” which allows a 70 year old judge who has served for 10 years to accept “senior” status thereby accepting lesser caseload responsibilities.

Note that the last time I checked Ms. Ginsberg on the Supreme Court was 81 years old.

Oregon’s rule has double discrimination for women, since women have statistically been likely to live longer than men.

**I believe the provision is contrary to the other provision of Oregon Constitutional law.**

Oregon Constitution: Bill of Rights:

**Section 20. Equality of privileges and immunities of citizens.** No law shall be passed granting to any citizen or class of citizens privileges, or immunities, which, upon the same terms, shall not equally belong to all citizens.–

## **ARTICLE II SUFFRAGE AND ELECTIONS**

**Section 1. Elections free.** All elections shall be free and equal.–

# Who Cares? – You Should -- I do.

**"It is far from true that all judges suffer significant deterioration in performance in their 70s", wrote U.S. Supreme Court Justice Sandra Day O'Connor in a 1991 ruling about a similar law in Missouri. "It is probably not true that most do. It may not be true at all."**

**Will Rogers comment was "I don't make jokes. I just watch the government and report the facts."**

**To forge a fixed and arbitrary rule in terms of years as the limit of a man's usefulness or human service, would only be to behead a large portion of the world's intellectual and moral leadership and thereby to impoverish mankind.** From: Northwestern University Law Review Northwestern University Law Review COMMENT:Mandatory Retirement of Appointed State Judges -- Age Discrimination?

I filed a memorandum in the Mandamus case against Kate Brown as the Secretary of State for failure to allow my name to be on the ballot. The disqualification was that she claimed I was over 75 years of age. Part of that memorandum says:

## **FACTS OF THIS CONTROVERSY**

The State of Oregon on the relation of Agnes Marie Petersen, who is the party beneficially interested, has petitioned for a Writ of Mandamus, directed to Kate Brown in her capacity as Oregon Secretary of State, to place her name on the ballot for Position 3 of the Judges of the Circuit Court for the 19<sup>th</sup> District of Oregon, which is up for election in 2014.

Agnes Marie Petersen is citizen of the United States of America, a female member of the Oregon State Bar, has had her law practice in Columbia County, Oregon for more than 10 years last past and under the Oregon law is entitled to run for election to Position 3. The Secretary of State of Oregon refused to place Petersen on the ballot claiming that she was disqualified because she is too old to run. The Defendant's office employee stated in a letter: "We have determined you do not meet the qualifications for the office of Judge of the Circuit Court, District 19, Position 3 for the following reasons:

Candidate cannot be older than 75 years old when he/she takes office.. " " In other correspondence to Relator the Defendant's employee stated:

Relator should win this case. The Oregon Constitution does not say that someone over 75 years of age may not run for Circuit Judge, nor does it say that a person over 75 may not serve as Judge. All it says is if a sitting Judge (putting aside the issue that it only refers to a "he") must retire at the end of the calendar year that he reaches 75.

The Defendant admits that "nothing in ORS 3.041, qualifications of Circuit Court Judge ...states that someone over 75 cannot file for office" and correctly states that the "Oregon Constitution states that any Judge who turns 75 shall retire at the end of that calendar year."

The only authority given by Defendant for its unwarranted interpretation and expansion of this textually limited Constitutional provision is ORS 246.150, which allows the elections division to “provide efficient election processes.” This statutory mandate allowing the elections division to provide “efficiency” does not allow the Secretary of State to re-write the Oregon Constitution or to restrict the right of a citizen to serve in an elected position in a manner the Constitution does not provide. The Defendant’s Form SEL 101 does not have a place for age.

The Oregon Constitution simply states that a sitting judge must retire during the calendar year he reaches the age of 75. It does not say someone over age 75 may not run for judge. It does not say someone over age 75 may not serve as judge. The plain text of the provision simply does not permit the Elections Division to exclude Relator from running or serving in this position if elected, under the guise of “logic” or “efficiency.”

**THE CONSTITUTION and OREGON REVISED STATUTES:**

**A. Qualifications for Judges:**

The Oregon Constitution and Law provide:

Oregon Constitution,

**Article I, Section 20. Equality of privileges and immunities of citizens.** No law shall be passed granting to any citizen or class of citizens privileges, or immunities, which, upon the same terms, shall not equally belong to all citizens.–

**Article II Suffrage and Elections**

**Section 1. Elections free.** All elections shall be free and equal.–

**Article VII, Section 1. Courts; election of judges; term of office; compensation.** The judicial power of the state shall be vested in one supreme court and in such other courts as may from time to time be created by law. The judges of the supreme and other courts shall be elected by the legal voters of the state or of their respective districts for a term of six years, and shall receive such compensation as may be provided by law, which compensation shall not be diminished during the term for which they are elected. [Created through initiative petition filed July 7, 1910, and adopted by the people Nov. 8, 1910]

Oregon Revised Statutes:

**ORS 3.041 Qualifications of circuit judges; residence**

**(1) Each judge of the circuit court shall be a citizen of the United States and a resident of this state.**

**(2) Each judge of the circuit court shall be a resident of or have principal office in the judicial district for which the judge is elected or appointed,** except that in any judicial district having a population of 500,000 or more, according to the latest federal decennial census, any judge of the circuit court may reside within 10 miles of the boundary of the judicial district.

**(3) In the seventh judicial district, two of the judges of the circuit court shall be residents of or have principal offices in Wasco County, Sherman County, Gilliam County or Wheeler County and two shall be residents of or have principal offices in Hood River County, Sherman County, Gilliam County or Wheeler County.**

**(4) In the fifteenth judicial district, four of the judges of the circuit court shall be residents of or have principal offices in Coos County and two shall be residents of or have principal offices in Curry County.**

**(5) The residence within this state required by subsection (1) of this section shall have been maintained for at least three years, and the residence or principal office required by**

**subsections (2) to (4) of this section shall have been maintained for at least one year, immediately prior to appointment or becoming a candidate for election to the office of circuit court judge.**

### **B. Forced Retirement of Judges.**

1. Oregon Constitution, Article VII

**Section 1.a. Notwithstanding the provisions of section 1, Article VII (Amended) of this Constitution, a judge of any court shall retire from judicial office at the end of the calendar year in which he attains the age of 75 years. The Legislative Assembly or the people may by law:**

**(1) Fix a lesser age for mandatory retirement not earlier than the end of the calendar year in which the judge attains the age of 70 years;**

**(2) Provide for recalling retired judges to temporary active service on the court from which they are retired; and (3) Authorize or require the retirement of judges for physical or mental disability or any other cause rendering judges incapable of performing their judicial duties.**

**This section shall not affect the term to which any judge shall have been elected or appointed prior to or at the time of approval and ratification of this section. [Created through S.J.R. 3, 1959, and adopted by the people Nov. 8, 1960]**

2. Oregon Revised Statutes on Secretary of State rules:

ORS 246.150 Rules

The Secretary of State may adopt rules the secretary considers necessary to facilitate and assist in achieving and maintaining a maximum degree of correctness, impartiality and efficiency in administration of the election laws. [1957 c.608 §8; 1979 c.190 §8; 1985 c.448 §1]

3. Oregon Administrative Law Judges do not count among Judges forced to retire upon reaching a certain age. They make up over 27 per cent of the Circuit and Administrative Law Judges in Oregon.

Calling a rose not a rose, note the language of following Statute saying Judges are not Judges

ORS 656.725 Duties and status of Administrative Law Judges (Oregon Revised Statutes (2011 Edition)) *Oregon Revised Statutes Oregon Revised Statutes (2011 Edition) Chapters 645 - 669 (Title 50) Chapter 645 — Commodity Transactions (Chapter 645 to Chapters 664 To 669) Workers' Compensation (Section 656.001 to Section 656.990) Duties and status of Administrative Law Judges* (2) Administrative Law **Judges** are not **judges** for the purposes of any provision of the **Oregon Constitution** and are not **judges** for the purposes of **judges' retirement** under ORS chapters 238 and 238A. [1995 c.332 §53; 2003 c.733 §80]

The Oregon Blue Book says:

The Office of Administrative Hearings was created by the Legislature in 1999 to provide an independent and impartial forum for citizens and businesses to dispute state agency actions against them. Sixty-five professional administrative law judges hold over 30,000 hearings a year for approximately 70 state agencies. By statute, all administrative law judges are required to be "impartial in the performance of [their] duties and shall remain fair in all hearings." Oregon is the 22nd state in the nation with an independent central panel of administrative law judges.

The Count of Circuit Judges in the Oregon Blue Book is 173.  $173 + 65 = 238$ .

### A. The Illinois Case:

Forced retirement of Judge based upon the Illinois State Constitution was overturned as unconstitutional in Illinois in June, 2009. It is the case of Maddux v. Blagojevich, 233 Ill. 2d 508, 911 N.E.2d 979, 331 Ill.Dec. 749 (Ill., 2009).

The Complaint by Judge William Maddux is attached in Appendix II. (not included)

In the Decisions the Court pointed out: "It is, of course, "never proper for a court to depart from plain language by reading into a statute exceptions, limitations, or conditions." *County of Knox ex rel. Masterson v. The Highlands, L.L.C.*, [188 Ill.2d 546](#), 556, [243 Ill. Dec. 224](#), [723 N.E.2d 256 \(1999\)](#).

The court must ascertain the plain and ordinary meaning of the relevant constitutional and statutory provisions in the constitutional and legislative contexts in which they appear. *Holland*, 206 Ill.2d at 489, [276 Ill.Dec. 887](#), [795 N.E.2d 240](#). The constitution must be read and understood according to the most natural and obvious meaning of the language in order to avoid eliminating or extending its operation. *Austin v. Healy*, [376 Ill. 633](#), 636, [35 N.E.2d 78 \(1941\)](#). Where the words of the constitution are clear, explicit, and unambiguous, there is no need for a court to engage in construction. *City of Beardstown v. City of Virginia*, [76 Ill. 34](#), 40 (1875).

Statutory constructions based on looking beyond the text of a statute are disfavored since a court has no authority to depart from the law's plain meaning or alter its language in a "way that constitutes a change in the plain meaning of the words actually adopted by the legislature." *U.S. Bank National Ass'n v. Clark*, 216 Ill.2d, [911 N.E.2d 991] 334, 346, [297 Ill.Dec. 294](#), [837 N.E.2d 74 \(2005\)](#). The same is true in construing constitutional provisions, perhaps even more so given that the language in question was what was presented to the citizens who voted to approve it."

### B. Rule Making

The Defendant may suggest that Defendant has passed rules that takes care of these language problems so she can prohibit Relator from being on the ballot.

The rules adopted cannot exceed, expand, change, add to, or take away from the language of the Constitution or the Statutes for the sake of expediency or efficiency of elections. The mandate of the law is all the rule can follow.

### ARGUMENT

It is quite clear that the retirement amendment only applies to sitting judges and also is clear that they have until the end of the year to retire. A plain reading is that it does not preclude anyone from being elected but only comes into possible application once a person becomes a sitting judge--assuming, of course, that the person becoming a judge is a "he".

Prohibitory provisions like that shall be read strictly, and not expansively.

Relator has researched every aspect of this case that she has been able and is persuaded that the position of the Secretary of State of Oregon is not tenable neither under Oregon law, nor under the Oregon and Federal Constitutions.

The position of defendant is not in accordance with the well-established rules of construction of the Constitution and of the Oregon Revised Statutes. The position taken by Defendant defeats the basic tenants of a free and open election process and does not follow what the Constitution and the Statutes say about the election of Judges nor about their retirement.

Defendant's position further impacts the Relator's free right to join in the election process as a candidate and is discriminatory to her and to others similarly situated.

## **FORCED RETIREMENT OF JUDGES – STUPID IDEA**

On a related subject, but not one upon which this present case turns, the forced retirement aspect of this case is a timely one, and Relator firmly believes that the Constitutional provision forcing retirement of Judges is unconstitutional in and of itself.

So far Relator has found only Illinois where the State Supreme Court threw out these egregious provisions. Relator believes they should be thrown out in all the states where it exists. At the present time the count that Relator knows of is as follows:

According to New York's Report of the Task Force on Mandatory Retirement of Judges of June 1999

Twenty-four states require retirement at age 70: Alabama, Alaska, Arizona, Arkansas, Connecticut, Florida, Hawaii, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, South Dakota, Vermont, Virginia, Wisconsin and Wyoming. Sixteen of these states make some form of exception to compulsory retirement. For example, New York permits Justices of the Supreme Court to serve for six additional years assuming they are mentally and physically fit.

The mandatory retirement age is 72 in four jurisdictions: Colorado, Iowa, North Carolina and South Carolina. It is 73 in North Dakota, and 74 in the District of Columbia. It is 75 in eight states: Georgia, Illinois, Indiana, Louisiana, Oregon, Texas, Utah and Washington.

*(When this was written the task force did not realize that Illinois would several years later throw out the provision in the Maddux case cited above)*

Thirteen jurisdictions (26%) have no mandatory retirement provisions, permitting judges to serve for as long as they are able, which states are:

California, Delaware, Idaho, Kentucky, Maine, Mississippi, Nebraska, Nevada, New Mexico, Oklahoma, Rhode Island, Tennessee and West Virginia.

March 5, 2013 the Wall Street Journal carried an article on the subject:

“State lawmakers across the nation are pushing to raise—or eliminate altogether—mandatory retirement ages for judges, citing longer life spans and a desire to keep experienced jurists on the bench.

Since the start of the year, legislators in at least 14 states have introduced bills that would allow judges to keep working well into their 70s or beyond. “

Driving the effort is the view that mandatory retirement forces too many judges from the bench prematurely, especially at a time when Americans are living longer and working into their 70s and 80s.

"Very competent jurists are being forced to retire in the primes of their careers," said Pennsylvania state Sen. Stewart Greenleaf, a Republican and the sponsor of a bill to eliminate the judicial retirement age. "And when this happens, you have to get their replacements trained, and you lose a good amount of time and experience."

Critics also point to a common practice that undercuts the rationale for mandatory retirement: Retired judges are often allowed to return to the bench to lend a hand at reducing caseloads. In these types of arrangements, judges are often paid by the day.

It's an option that Macomb County, Mich., Circuit Judge Peter Maceroni, 72 years old, said he would likely pursue when he is forced to retire at the end of next year. Still, he found it odd that he would be allowed to serve as a visiting judge but not to run for re-election. "It doesn't make any sense," Judge Maceroni said. "I don't have a health issue, I'm in relatively good shape, and I want to keep working."

Most Respectfully Submitted,

Agnes Marie Petersen OSB 60067- 8

Attached is a copy of the Mutnomah Bar Association 100<sup>th</sup> Anniversary Newsletter about Oregon Women Lawyers. I knew or know most of them, and love them all!

See it at <http://www.mbabar.org/assets/documents/history/history-june06.pdf>