

**[J-38A-2013, J-38B-2013] [MO: Saylor, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

SENIOR JUDGE JOHN DRISCOLL,	: No. 19 MAP 2013
SENIOR JUDGE SANDRA MAZER	:
MOSS, AND JUDGE JOSEPH D.	: Extraordinary Relief was granted from
O'KEEFE,	: Commonwealth Court at 43 MD 2013

Petitioners

v.

THOMAS W. CORBETT, JR.,
GOVERNOR OF THE COMMONWEALTH
OF PENNSYLVANIA, CAROL T.
AICHELE, SECRETARY OF THE
COMMONWEALTH OF PENNSYLVANIA,
AND ZYGMONT A. PINES, COURT
ADMINISTRATOR OF THE
COMMONWEALTH OF PENNSYLVANIA,

Respondents

: ARGUED: May 8, 2013

JUDGE ARTHUR TILSON,

Petitioner

v.

THOMAS W. CORBETT, JR.,
GOVERNOR OF THE COMMONWEALTH
OF PENNSYLVANIA, CAROL T.
AICHELE, SECRETARY OF THE
COMMONWEALTH OF PENNSYLVANIA,
AND ZYGMONT A. PINES, COURT
ADMINISTRATOR OF THE
COMMONWEALTH OF PENNSYLVANIA,

Respondents

: No. 20 MAP 2013

: Extraordinary Relief was granted from
Commonwealth Court at 48 MD 2013

: ARGUED: May 8, 2013

CONCURRING OPINION

MR. JUSTICE EAKIN

DECIDED: June 17, 2013

I join the majority in its entirety.

Petitioners challenge the age of mandatory withdrawal from the bench, largely contending people, even judges, do not deteriorate intellectually as rapidly they did 50 years ago. See Brief for Petitioners, at 35. Whether true or not, this argument is unavailing — as the majority correctly points out, a constitutional provision does not become void or voidable simply because the premise behind its enactment no longer finds the support it once did. See Majority Slip Op., at 22-23.

I write separately to suggest another, more structural justification of age limitations for judicial service, beyond the presumption of mental decay. I acknowledge such justification is not needed to resolve this challenge, but offer it only to impugn petitioners' premise that mental acuity is the sole rationale for this constitutional provision.

The Pennsylvania Constitution is designed to assure the judiciary a measure of independence not given to the other branches of government in order to insulate it from political pressure. See generally Commonwealth, ex rel. Jiuliente v. County of Erie, 657 A.2d 1245, 1247 (Pa. 1995) ("Article V of the Pennsylvania Constitution bestows upon the judiciary certain inherent rights and powers to do what is reasonably necessary for the administration of justice."). For instance, terms of office are not merely two years, or four years, but an expansive ten years. Pa. Const. art. V, § 15(a). Once elected, common pleas and appellate judges do not face contested reelections or partisan opponents — they only face the electorate via a "yes or no" retention vote. Pa. Const. art. V, § 15(b);

42 Pa.C.S. § 3153(b). Furthermore, Article II, § 8 establishes a legislator's compensation may not be increased during a term; in contrast, Article V, § 16(a) assures a jurist's compensation will not be decreased during a term in retaliation for decisions made. Pa. Const. art. II, § 8; Pa. Const. art. V, § 16(a).

Jurists are thus uniquely positioned and sequestered in various ways to protect their impartiality and independence — vital bulwarks of our governmental system. However, such sequestration has a counterpoint, for too much immunity risks usurpation of power, which the tripartite structure was designed to prevent. If the power of independence is given, it is hardly imprudent to put some concrete limit on that power. A time-based limit does nothing to threaten judicial independence, but simply creates terminal points at which the power will pass to others. Thus, Article V, § 16(b) seems to me a legitimate and considered constitutional strategy to establish a temporal limit on judicial service, regardless of past or current perceptions of one's ability to perform competently beyond any given age.

Madame Justice Todd and Mr. Justice McCaffery join this concurring opinion.