

## Veto No. 1990-2

SB 1046

March 28, 1990

To the Honorable, the Senate  
of the Commonwealth of Pennsylvania:

I am returning herewith, without my approval, Senate Bill 1046, Printer's No. 1665, entitled "An act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for automatic retirement of judges and district justices."

Senate Bill 1046 would extend the point of automatic retirement for judges and district justices from the date of "attaining the age of 70 years," currently provided in Section 3351 of the Judicial Code, until "December 31 of the year in which [judges and district justices] attain the age of 70 years." The current wording of Section 3351 tracks the language of Article V, Section 16(b) of the Pennsylvania Constitution which provides that "[j]ustices, judges and justices of the peace shall be retired upon attaining the age of 70 years." Because the language of Senate Bill 1046 conflicts directly with the language of Article V, Section 16(b) of the Pennsylvania Constitution, I am compelled to veto this bill.

Our Supreme Court has very recently confirmed that the terms of Article V, Section 16(b) "are mandatory and...express in the simplest language possible the absolute will of the sovereign people of the Commonwealth that jurists must retire upon reaching their seventieth birthdate." *In re Stout*, 521 Pa. 571, 581, 559 A.2d 489, 494 (1989). The pertinent language is "short and straightforward, without embellishment, expansion or ambiguity..." *Id.* at 577, 559 A.2d at 492.

In holding that Article V, Section 16(b), requires judges to retire upon reaching their 70th birthdate, the Supreme Court in *Stout* cited a number of other cases in which it had earlier rejected contentions that the Pennsylvania Constitution somehow permitted judges to continue serving beyond their 70th birthdates. Specifically, the Supreme Court cited its own recent decision in "*Gondelman v. Pennsylvania*, 520 Pa. 451, 554 A.2d 896 (1989), wherein [the Supreme Court] emphatically held constitutional the mandatory retirement provision at age seventy and held that jurists after attaining said age could serve only in a senior judge capacity." *Stout*, 521 Pa. at 579, 559 A.2d at 493. The Supreme Court also cited its earlier decision in "*Firing v. Kephart*, 466 Pa. 560, 353 A.2d 833 (1976), wherein [the Supreme Court] held that a district justice must retire upon attainment of age seventy..." *Id.*

The Supreme Court in *Stout* rejected a similar contention that under extenuating circumstances a Supreme Court justice could serve beyond her 70th birthday, stating:

As a matter of our own constitutional law, this section applies to all jurists upon their attaining the age of seventy and it must be applied here as it was applied in our recent case of *Gondelman, supra*. Any other reading of this section would put us in the precarious position of extending a constitution-

ally fixed term of judicial office, which we cannot do. However appealing the power to do so might appear under even extenuating circumstances, we are bound to give effect to the clear language of the Constitution.

*Stout*, 521 Pa. at 582, 559 A.2d at 495.

A statute cannot amend the Constitution. Here, that is precisely what the General Assembly is purporting to do under Senate Bill 1046. The framers of our Constitution made it clear that a judge must be retired upon reaching the age of 70. The General Assembly may not extend that term of office by statute, as it has attempted in Senate Bill 1046. Therefore, I am compelled to return Senate Bill 1046 without my signature.

ROBERT P. CASEY