Dear Bill:

Without addressing here some of our differing views as to how the standard of equal protection analysis should be framed, I write to clarify one point as to which there simply is a misunderstanding.

The hypothetical Virginia statute, posed in your letter (pp. 14-17), rests on an assumption that I would require a single legislative purpose and that the challenged classification be measured against the purpose of the statute as a whole. This is not my view. I would require that the means chosen by the legislature be rationally related to the purpose of the particular classification under attack. In addition a rational relationship to any one of several express or implicit purposes would be sufficient.

In my view, the statute you describe would contain no constitutional infirmities. The grandfather clause would be rationally related to the purpose of avoiding immediate imposition of a financial burden on those who already have acquired and begun operating trucks without contemplating the requirements of the new statute. And the exception for agricultural equipment would be rationally related to the objective of encouraging (or not destroying) the business of agriculture. Ordinarily the Court would not consider whether these provisions serve or undercut the overall purpose of the Act.

I will clarify this point in any subsequent circulation of the memorandum.

Sincerely,

Mr. Justice Rehnquist

lfp/ss
MEMORANDUM

TO: Chris Whitman
FROM: Lewis F. Powell, Jr.

DATE: June 2, 1976

I dictate this brief memorandum at home (Tuesday night) have found time - at long last - to read your memorandum commenting on Rehnquist's memo in Murgia.

We have been under such pressure to meet the June 1 "deadline" that I have not reported to you on my rather disquieting talk with Justice Stewart. He is "hung up" as others have been, with our favorite paragraph on purpose. This is the same paragraph Justice Stewart wished us to take out, but Justice Brennan insists - at least until now - that we retain.

Justice White conceded that he had told Bill Brennan he would join the draft. More careful study (and possibly Rehnquist's circulation) seem to have left Justice White undecided. He indicated that he might suggest some changes. I have been awaiting further word from him.

Although I am more than a little bit discouraged as to the prospect of holding four of us together, I do think it is desirable to correct Bill Rehnquist's misapprehension as to what we have said at page 14 et seq.
Rather than change the opinion itself without having heard from White, I would appreciate your drafting a letter to Rehnquist on this point, stating also that it will be clarified in any subsequent circulation of the opinion.

L.F.P., Jr.
13. Of course, ascertainment of purpose by a state court should be respected, and substantial weight also should be given to the interpretation by the administrative or executive agency charged with a statute's enforcement.

We do note that the proper functioning of the political process usually is best served where the policies or objectives of the legislature are identified at the time of enactment. When legislation is enacted against such a background, there is greater assurance that the legislature has focused on the problem.
Identification of the state purpose normally presents little difficulty. Although the purpose may not be imagined, it usually is apparent from the face of the statute and its legislative history.
June 7, 1976

No. 74-1044 Massachusetts Board of Retirement v. Murgia

MEMORANDUM TO THE CONFERENCE:

Here is my revision of Murgia.

I have omitted the discussion of purpose (p. 11) that Bill Brennan and I liked, but that troubled several of you.

In my view, the memorandum reflects no change in Equal Protection doctrine.

Although Bill Brennan approves of my resubmitting this to the Conference, I understand that he will not join an opinion that omits - as this memorandum now does - the discussion of purpose referred to above.

L.F.P., Jr.
June 9, 1976

Re: No. 74-1044 - Massachusetts Bd of Retirement v. Murgia

Dear Lewis:

As you know, I have come full circle more than once in this case; and I apologize if I have wasted your and Bill Brennan's time, particularly since I now find that I much prefer to put aside any effort to pacify the law review critics or commentators and to attempt to clarify our equal protection standards for the benefit of the district judges and courts of appeals.

One reason, among others, driving me in this direction is the fact that you have joined Harry Blackmun's opinions in Lucas, No. 75-88, and Norton, No. 74-6212. I had thought that your Murgia draft intended to redefine and somewhat stiffen the rationality test by requiring a demonstration that the classification bears a fair and substantial relationship to the ascertained purpose or purposes of the statute. Yet in Lucas and Norton, equal protection cases in which you would apply the fair and substantial relationship test, the sole justification for the classification appears to be administrative convenience which is no more than a secondary purpose at best. If this consideration alone satisfies the test, then it is even less help than the unadorned rationality standard. Rather than confuse the law further, I would prefer that Murgia be decided in the name of rationality only, as it easily could be. I am of the same opinion with respect to Lucas and Norton.

Sincerely,

Mr. Justice Powell

Copies to Conference
June 9, 1976

Re: No. 74-1044 - Massachusetts Board of Retirement v. Murgia

Dear Lewis:

Your most recent draft in this case has accommodated many of the concerns I expressed as to the earlier draft, and with the end of the Term hopefully in view, I will try to do some accommodating of my own. I joined Harry's Mathews v. Lucas opinion notwithstanding my disagreement with some of the language relating to the Equal Protection Clause test, and I am willing to join your opinion on pretty much the same basis. That basis is that neither of these cases be treated as a definitive reassessment of the proper standard of review where only minimum scrutiny is to be applied.

I fundamentally disagree with your stress on "purpose", as if this were an element which could be wholly isolated from the enacted statute itself, with some "ends-means" test then being applied to see how good a job the legislature did in working from its purpose to the enactment of the law. I recognize, however, that there is language in some of our cases which can be read to support that sort of test. I also disagree with the language in your opinion which seems to restrict the ability of courts to uphold statutes ("purpose may not be imagined," p. 11), and with other language which
seems to expand their authority to strike statutes down ("distinction must be genuinely related to the state's purpose," p. 13). I will swallow my objections, however, if the resolution of this battle is by agreement to be left for another day.

Because of all the internal exchanges that have taken place in this case, I think that if we are to agree on an opinion, and also to agree that the opinion is not to be a definitive restatement of the Equal Protection standard, that opinion ought to keep alive both sides of the doctrinal dispute. I can subscribe to an opinion containing your "purpose" analysis, even though I disagree with it, if you will include in some appropriate place in the opinion a quotation with approval of the standards set forth in McGowan v. Maryland, 366 U.S. 420, 425-26 (1961). Admittedly this is inconsistent with your analysis, but it will not be the first time that an Equal Protection opinion has contained verbal inconsistencies.

If, on the other hand, you feel strongly that this is a case in which the definitive reassessment ought to be made, I cannot join your opinion as it now stands, and due to the lateness in the Term I would be inclined to vote for reargument.

Sincerely,

Mr. Justice Powell

Copies to the Conference
June 14, 1976

Re: 74-1044 - Massachusetts Board of Retirement v. Murgia

Dear Lewis:

I remain of the view that McGowan v. Maryland is the sound test. I agree with Byron's memo of June 9 that federal judges are much confused and we owe an obligation to clarify, not rewrite, the ground rules. A McGowan reaffirmance will do that.

Regards,

[Signature]

Mr. Justice Powell

Copies to the Conference

Handy, very helpful!
June 15, 1976

MEMORANDUM TO THE CONFERENCE:

Here is a suggested Per Curiam that would dispose of Murgia.

It is about as blandly written as one can write to dispose of the equal protection arguments advanced in this case. It leaves, I think, each of us free to "fight again another day" as to our respective perceptions of a proper formulation of equal protection analysis.

Bill Brennan has seen this "bare-bones" draft, and - subject to one relatively minor change - he thinks he could join it as a Per Curiam opinion. He does, however, have certain reservations that he will mention at Thursday's Conference. Bill is not disposed to join even this Per Curiam if other Justices still wish to write. I have assured Bill my zeal for writing has been so thoroughly dampened by this spring's experience, that it may be sometime before I venture forth again - although I suppose I will in due time.

Bill also has Dukes in mind, and will discuss its posture in light of what we decide to do about Murgia. A possibility that I suggested to him is that we might dispose of Dukes in very much the same way, by a Per Curiam that leaves all options open. After all, Dukes is a "peewee".

My own view is that there is much to be said for our disposing of these cases rather than carrying them over for futile reargument.

L.F.P., Jr.
June 16, 1976

Re: No. 74-1044 - Massachusetts Board of Retirement v. Murgia

Dear Lewis:

I think you have done an admirable job at rewriting this opinion to satisfy the maximum possible number of your colleagues, and if you are willing to make two minor changes which I think are completely consistent with your own previous expressions on the subject, I shall be delighted to climb aboard. On page 9, the first two sentences in the paragraph beginning on that page now read:

"That the State chooses not to determine fitness more precisely through individualized testing after age 50 is not to say that the State's purpose is not rationally furthered by a maximum age limitation. It is only to say that with regard to the interests of all concerned, the State perhaps has not chosen the best means to accomplish its purpose."

Would you be willing to substitute for the phrase "State's purpose" in the first sentence, the phrase "objective of maximizing physical preparedness", and to substitute for the word "its" in the second sentence the word "this". I think the sentence as now written does not make adequate...
allowance for the concept of secondary purposes which the legislature may have had in mind in enacting the statute, and I gather from your response to my hypothetical about the Virginia and West Virginia safety equipment statutes that you fully agree that secondary purposes are relevant in applying the standards you set forth.

Sincerely,

Mr. Justice Powell

Copy to Mr. Justice Stewart
Re: No. 74-1044 - Massachusetts Board of Retirement v. Murgia

Dear Lewis:

Please join me.

Sincerely,

Mr. Justice Powell

Copies to Conference
June 16, 1976

No. 74-1044 - Massachusetts Board v. Murgia

Dear Lewis,

I agree with Bill Rehnquist's suggested minor verbal change and hope you will see fit to make it. I would ask you also to delete the last sentence of fn. 8, since I cannot agree that whether something is constitutional depends upon whether it is "reasonable" -- except perhaps in the Fourth Amendment area.

If these very minor, and I hope noncontroversial, changes are made, I shall gladly join your proposed Per Curiam with no separate writing.

Sincerely yours,

Mr. Justice Powell

Copy to Mr. Justice Rehnquist
MEMORANDUM

TO: Chris Whitman
FROM: Lewis F. Powell, Jr.

DATE: June 16, 1976

After this "circus" subsides with the end of the Term, and if you can bring yourself ever again to think about Murgia, I would appreciate your putting our file in proper shape to go downstairs for permanent filing.

Only you and I possibly could be familiar with the gyrations through which this miserable case has passed, and sort out the drafts that should be retained (for a history of its checkered career) from those that are duplicates, or otherwise may be discarded.

I particularly want the correspondence file to be complete, and in order. Also, we should have a copy of each of the various circulations.

And, before you depart (sad thought!), please put my "equal protection" notebook in shape, including such Murgia data as you think appropriate.

Maybe you will need a tranquilizer before undertaking this task. Perhaps Beckie can provide you with one!

L.F.P., Jr.
June 16, 1976

Re: No. 74-1044 - Massachusetts Board of Retirement
v. Murgia

Dear Lewis:

please join me.

Sincerely,

Mr. Justice Powell

Copies to the Conference
June 17, 1976

Re: No. 74-1044, Massachusetts Board of Retirement v. Murgia

Dear Lewis,

I am glad to join the per curiam you have circulated in this case.

Sincerely yours,

Mr. Justice Powell

Copies to the Conference
June 17, 1976

Re: No. 74-1044 - Massachusetts Board of Retirement v. Murgia

Dear Lewis:

Please join me in the per curiam circulated June 15.

Sincerely,

[Signature]

Mr. Justice Powell

cc: The Conference
June 17, 1976

Re: 74-1044 - Massachusetts Bd. of Retirement v. Murgia

Dear Lewis:

I join your per curiam of June 15.

Regards,

Mr. Justice Powell

Copies to the Conference
To: The Chief Justice
   Mr. Justice Brennan
   Mr. Justice Stewart
   Mr. Justice White
   Mr. Justice Blackmun
   Mr. Justice Powell
   Mr. Justice Rehnquist
   Mr. Justice Stevens

From: Mr. Justice Marshall

Circulated: ____________
Recirculated: JUN 21 1976

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1044

Massachusetts Board of
Retirement et al.,         On Appeal from the United
   Appellants.          States District Court for the
v.                      District of Massachusetts.

Robert D. Murgia.

[April —, 1976]

Mr. Justice Marshall, dissenting.

Today the Court holds that it is permissible for the Commonwealth of Massachusetts to declare that members of its state police force who have been proven medically fit for service are nonetheless legislatively unfit to be policemen and must be terminated—involuntarily "retired"—because they have reached the age of 50. Although we have called the right to work "of the very essence of the personal freedom and opportunity that it was the purpose of the [Fourteenth] Amendment to secure," Truax v. Raich, 239 U.S. 33, 41 (1915), the Court finds that the right to work is not a fundamental right. And, while agreeing that "the treatment of the aged in this Nation has not been wholly free of discrimination," ante, at 6, the Court holds that the elderly are not a suspect class. Accordingly, the Court undertakes the scrutiny mandated by the bottom tier of its two-tier equal protection framework, finds the challenged legislation not to be "wholly unrelated" to its objective, and holds, therefore, that it survives equal protection attack. I respectfully dissent.

Although there are signs that its grasp on the law is weakening, the rigid two-tier model still holds sway as

Although the Court outwardly adheres to the two-tier model, it has apparently lost interest in recognizing further "fundamental" rights and "suspect" classes. See *San Antonio School District v. Rodriguez*, supra (rejecting education as a fundamental right); *Frontiero v. Richardson*, 411 U. S. 677 (1973) (declining to treat women as a suspect class). In my view, this result is the natural consequence of the limitations of the Court's traditional equal protection analysis. If a statute invades a "fundamental" right or discriminates against a "suspect" class, it is subject to strict scrutiny. If a stat...
Just as subject to strict scrutiny, the statute always, or nearly always, see *Korematsu v. United States*, 323 U.S. 214 (1944), is struck down. Quite obviously, the only critical decision is whether strict scrutiny should be invoked at all. It should be no surprise, then, that the Court is hesitant to expand the number of categories of rights and classes subject to strict scrutiny, when each expansion involves the invalidation of virtually every classification bearing upon a newly covered category. But however understandable the Court's hesitancy to invoke strict scrutiny, all remaining legislation should not drop into the bottom tier, and be measured by the mere rationality test. For that test, too, when applied as articulated, leaves little doubt about the outcome; the challenged legislation is always upheld. See *New Orleans v. Dukes*, — U.S. — (1976) (overruling *Morey v. Doud*, 354 U.S. 457 (1957), the only modern case in which this Court has struck down an economic classification as irrational). It cannot be gainsaid that there remain rights, not now classified as "fundamental," that remain vital to the flourishing of a free society, and classes, not now classified as "suspect," that are unfairly burdened by invidious discrimination unrelated to the individual worth of their members. Whatever we call

1 Some classifications are so invidious that they should be struck down automatically absent the most compelling state interest, and by suggesting the limitations of strict scrutiny analysis I do not mean to imply otherwise. The analysis should be accomplished, however, not by stratified notions of "suspect" classes and "fundamental" rights, but by individualized assessments of the particular classes and rights involved in each case. Of course, the traditional suspect classes and fundamental rights would still rank at the top of the list of protected categories, so that in cases involving those categories analysis would be functionally equivalent to strict scrutiny. Thus, the advantages of the approach I favor do not appear in such cases, but rather emerge in those dealing with traditionally less protected classes and rights. See pp. 5-13, infra.
these rights and classes, we simply cannot forgo all judicial protection against discriminatory legislation bearing upon them, but for the rare instances when the legislative choice can be termed "wholly irrelevant" to the legislative goal. *McGowan v. Maryland*, 366 U. S. 420, 425 (1961).

While the Court's traditional articulation of the rational basis test does suggest just such an abdication, happily the Court's deeds have not matched its words. Time and again, met with cases touching upon the prized rights and burdened classes of our society, the Court has acted only after a reasonably probing look at the legislative goals and means, and at the significance of the personal rights and interests invaded. *Stanton v. Stanton*, 421 U. S. 7 (1975); *Weinberger v. Weisenfeld*, 420 U. S. 636 (1975); *United States Dept. of Agriculture v. Moreno*, 413 U. S. 528 (1973); *Frontiero v. Richardson*, 411 U. S., at 691 (Powell, J., concurring in the judgment); *James v. Strange*, 407 U. S. 128 (1972); *Weber v. Aetna Casualty & Surety Co.*, 406 U. S. 164 (1972); *Eisenstadt v. Baird*, 405 U. S. 438 (1972); *Reed v. Reed*, 401 U. S. 71 (1971). See *San Antonio School District v. Rodriguez*, 411 U. S., at 98–110 (MARSHALL, J., dissenting). These cases make clear that the Court has rejected, albeit sub silentio, its most deferential statements of the rationality standard in assessing the validity under the Equal Protection Clause of much noneconomic legislation.

But there are problems with deciding cases based on factors not encompassed by the applicable standards. First, the approach is rudderless, affording no notice to interested parties of the standards governing particular

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cases and giving no firm guidance to judges who, as a consequence, must assess the constitutionality of legislation before them on an ad hoc basis. Second, and not unrelatedly, the approach is unpredictable and requires holding this Court to standards it has never publicly adopted. Thus, the approach presents the danger that, as I suggest has happened here, relevant factors will be misapplied or ignored. All interests not "fundamental" and all classes not "suspect" are not the same; and it is time for the Court to drop the pretense that, for purposes of the Equal Protection Clause, they are.

II

The danger of the Court's verbal adherence to the rigid two-tier test, despite its effective repudiation of that test in the cases, is demonstrated by its efforts here. There is simply no reason why a statute that tells able-bodied police officers, ready and willing to work, that they no longer have the right to earn a living in their chosen profession merely because they are 50 years old should be judged by the same minimal standards of rationality that we use to test economic legislation that discriminates against business interests. See New Orleans v. Duke, supra; Williamson v. Lee Optical Co., 348 U. S. 483 (1955). Yet, the Court today not only invokes the minimal level of scrutiny, it wrongly adheres to it. Analysis of the three factors I have identified above—the importance of the governmental benefits denied, the character of the class, and the asserted state interests—demonstrates the Court's error.

Whether "fundamental" or not, "the right of the individual . . . to engage in any of the common occupations of life" has been repeatedly recognized by this Court as falling within the concept of liberty guaranteed by the Fourteenth Amendment. Board of Regents v. Roth, 408
U. S. 564, 572 (1972), quoting Meyer v. Nebraska, 262 U. S. 399 (1923). As long ago as the Slaughterhouse Cases, Justice Bradley wrote that this right "is an inalienable right; it was formulated as such under the phrase 'pursuit of happiness' in the Declaration of Independence . . . . This right is a large ingredient in the civil liberty of the citizen." 111 U. S. 746, 762 (1884) (concurring opinion). And in Smith v. Texas, 233 U. S. 630 (1914), in invalidating a law that criminally penalized anyone who served as a freight train conductor without having previously served as a brakeman, and that thereby excluded numerous equally qualified employees from that position, the Court recognized that "all men are entitled to the equal protection of the law in their right to work for the support of themselves and families." Id., at 641.

"In so far as a man is deprived of the right to labor his liberty is restricted, his capacity to earn wages and acquire property is lessened, and he is denied the protection which the law affords those who are permitted to work. Liberty means more than freedom from servitude, and the constitutional guarantee is an assurance that the citizen shall be protected in the right to use his powers of mind and body in any lawful calling." Id., at 636.

See also Arnett v. Kennedy, 416 U. S. 134 (1974); Perry v. Sinderman, 408 U. S. 593 (1972); Bell v. Burson, 402 U. S. 535 (1971); Keyishian v. Board of Regents, 385 U. S. 589, 605-606 (1967); Schware v. Board of Bar Examiners, 353 U. S. 232, 238-239 (1957); Slochower v. Board of Higher Education, 350 U. S. 551 (1956); Wieman v. Updegraff, 344 U. S. 183 (1952); Truax v. Raich, 239 U. S., at 41. Even if the right to earn a living does not include the right to work for the government, it is

1 See Board of Regents v. Roth, 408 U. S. 564, 567 (1972).
settled that because of the importance of the interest involved, we have always carefully looked at the reasons asserted for depriving a government employee of his job.

While depriving any government employee of his job is a significant deprivation, it is particularly burdensome when the person deprived is an older citizen. Once terminated, the elderly cannot readily find alternative employment. The lack of work is not only economically damaging, but emotionally and physically draining. Deprived of his status in the community and of the opportunity for meaningful activity, fearful of becoming dependent on others for his support, and lonely in his new-found isolation, the involuntarily retired person is susceptible to physical and emotional ailments as a direct consequence of his enforced idleness. \(^1\) Ample clinical evidence supports the conclusion that mandatory retirement poses a direct threat to the health and life expectancy of the retired person,\(^1\) and these consequences of termination for age are not disputed by appellant. Thus, an older person deprived of his job by the government loses not only his right to earn a living, but, too often, his health as well, in sad contradiction of Browning's promise, "The best is yet to be. The last of life, for which the first was made."\(^5\)

Not only are the elderly denied important benefits when they are terminated on the basis of age, but the

\(^{1}\) See American Medical Asn. (AMA) Comm. on Aging, Retirement, A Medical Philosophy and Approach; M. Barron, The Aging American 76-80, and sources cited (1961). Because, as one former AMA president bluntly put it, "Death comes at retirement," quoted in M. Barron, supra, at 78, the AMA has formally taken a position against involuntary retirement and has submitted an amicus brief in this case to inform us of the medical consequences of the practice.

\(^{5}\) R. Browning, Rabbis Ben Ezra, St. 1.
74-1944—DISSENT

classification of older workers is itself one that merits judicial attention. Whether older workers constitute a "suspect" class or not, it cannot be disputed that they constitute a class subject to repeated and arbitrary discrimination in employment. See U. S. Dept. of Labor, The Older American Worker: Age Discrimination in Employment (1965); M. Barron, The Aging American 55-68 (1961). As Congress found in passing the Age Discrimination in Employment Act in 1967,

"[I]n the face of rising productivity and affluence, older workers find themselves disadvantaged in their efforts to retain employment, and especially to regain employment when displaced from jobs.

"[T]he setting of arbitrary age limits regardless of potential for job performance has become a common practice, and certain otherwise desirable practices may work to the disadvantage of older persons.

"[T]he incidence of unemployment, especially long-term unemployment with resultant deterioration of skill, morale, and employer acceptability is, relative to the younger ages, high among older workers; their numbers are great and growing; and their employment problems grave."

29 U. S. C. § 621 (subsection numbers omitted).

See also ante, at 10 n. 1.

Of course, the Court is quite right in suggesting that distinctions exist between the elderly and traditional suspect classes such as Negroes, and between the elderly and "quasi-suspect" classes such as women or illegitimates. The elderly are protected not only by certain anti-discrimination legislation, but by legislation that provides them with positive benefits not enjoyed by the public at large. Moreover, the elderly are not isolated in society, and discrimination against them is not pervasive but is
centered primarily in employment. The advantage of a flexible equal protection standard, however, is that it can readily accommodate such variables. The elderly are undoubtedly discriminated against, and when legislation denies them an important benefit—employment—I conclude that to sustain the legislation the Commonwealth must show a reasonably substantial interest and a scheme reasonably closely tailored to achieving that interest. Cf. San Antonio School District v. Rodriguez, 411 U. S., at 124–126 (MARSHALL, J., dissenting). This inquiry, ultimately, is not markedly different from that undertaken by the Court in Reed v. Reed, supra.

Turning, then, to the Commonwealth’s arguments, I agree that the purpose of the mandatory retirement law is legitimate, and indeed compelling. The Commonwealth has every reason to assure that its state police officers are of sufficient physical strength and health to perform their jobs. In my view, however, the means chosen, the forced retirement of officers at age 50, is so overinclusive that it must fall.

All potential officers must pass a rigorous physical examination. Until age 40, this same examination must be passed every two years—when the officer re-enlists—and, after age 40, every year. The Commonwealth has conceded that “[w]hen a member passes his re-enlistment or annual physical, he is found to be qualified to perform all of the duties of the Uniformed Branch of the Massachusetts State Police.” App. 43. See App. 52. If a member fails the examination, he is immediately terminated or refused re-enlistment. Thus, the only members of the state police still on the force at age 50 are those who have been determined—repeatedly—by the Commonwealth to be physically fit for the job. Yet, all of these physically fit officers are automatically terminated at age 50. The Commonwealth does not
seriously assert that its testing is no longer effective at age 50," nor does it claim that continued testing would serve no purpose because officers over 50 are no longer physically able to perform their jobs." Thus the Commonwealth is in the position of already individually testing its police officers for physical fitness, conceding that such testing is adequate to determine the physical ability...
of an officer to continue on the job, and conceding that that ability may continue after age 50. In these circum-
cstances, I see no reason at all for automatically termi-
nating those officers who reach the age of 50; indeed, that action seems the height of irrationality.

Accordingly, I conclude that the Commonwealth's mandatory retirement law cannot stand when measured against the significant deprivation the Commonwealth's action works upon the terminated employees. I would affirm the judgment of the District Court.

8 The Court's conclusion today does not imply that all mandatory retirement laws are constitutionally valid. Here the primary state interest is in maintaining a physically fit police force, not a mentally alert or manually dexterous workforce. That the Court concludes it is rational to legislate on the assumption that physical strength and well-being decrease significantly with age does not imply that it will reach the same conclusion with respect to legislation based on assumptions about mental or manual ability. Accordingly, a mandatory retirement law for all government employees would stand in a posture different from the law before us today.
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74-1044 Mass. Bd. of Retirement v. Murgia