

TESTIMONY OF SENATOR DELORES G. KELLEY

**REGARDING SENATE BILL 596 - JUDGES - SELECTION, ELECTION, TENURE AND
CONTINUANCE IN OFFICE**

BEFORE THE SENATE JUDICIAL PROCEEDINGS COMMITTEE

ON FEBRUARY 12, 2020

Mr. Chairman and Members:

Everyone has the right to a fair, independent and impartial judiciary that reflects the community in which we live. Everyone has a right to appear before a judge free from political influence or social pressure (fair courts, fair outcomes).

Not too long ago it was difficult or nearly impossible for bright, qualified minorities, both men and women, to attain a seat on the bench. During those times, perhaps contested elections served a purpose. Times, however, have changed. It is no longer acceptable for a governor or the nominating committee

to appoint judges without an eye toward diversity. We demanded it and we will continue to do so. In 1981, the percentage of women and minority judges in Maryland was approximately 12 percent of the judiciary; today, it is over 56 percent. Now is the time to ensure we do not lose momentum. We need to allow smart, qualified women and minorities who make it to the bench to stay there, without being subject to contested elections.

In Maryland's courts, the governor appoints judicial candidates who fill out a comprehensive application and are vetted by a nominating commission. Before they even reach their interview with the nominating commission, however, they are also vetted by their local bar association and a number of specialty bar associations including:

- 1. J. Franklyn Bourne Bar Association**
- 2. Maryland Defense Counsel, Inc.**
- 3. Maryland Hispanic Bar Association**
- 4. Lesbian, Gay, Bisexual and Transgender (LGBT) Bar Association of Maryland**
- 5. Maryland State Bar Association**
- 6. Monumental City Bar Association**
- 7. Women's Bar Association**

8. Asian Pacific American Bar Association of Maryland, Inc.
9. Alliance of Black Women Attorneys of Maryland, Inc.
10. Maryland Association for Justice, Inc.
11. Women's Law Center of Maryland, Inc.
12. Maryland State's Attorneys' Association

In the Circuit Courts, after judges are appointed, they must run in the next general election and, if they win, they must run again in 15 years. In these elections, other lawyers can run against them. These other lawyers, often rejected by the nominating commission or simply refusing to participate in the established process, need only be a 30 year old, five year resident in good standing with the bar, no vetting, no qualification check, no need to have ever stepped into a courtroom.

The worst part, however, is two-fold. First, the sitting judge is bound by a code of ethics and can only tell voters, for example, "I will be fair, I will work hard, I will be impartial." That is, after all, what we want in a judge. Although the opposing lawyer should follow the Maryland Attorneys' Rules of Professional Conduct, there are dozens of examples of where they do not. The opposing candidates say anything they want, for example, "I will be tough on

crime, I will always give long sentences to offenders with guns, I will always put addicts in jail.” These comments often go without repercussions. Secondly, and possibly most offensive is the fact that the sitting judges must engage in the unfortunate practice of fundraising. How can that possibly inspire the trust and confidence of the public? It is time to take politics away from a place where it does not belong.

Also of concern, is that most contributors to Circuit Court elections are the attorneys who must appear before the judges (an inherent conflict of interest). Unlike office holders and candidates for positions in the legislative and executive branches, judges and candidates for judicial elections should not favor the interests of their campaign supporters, who are overwhelmingly lawyers and frequent litigants, with cases before the court.

Judges are required to faithfully apply the law to the facts before them, without consideration of whether a party or a lawyer in a case supported the judge’s election campaign. Even the appearance of quid pro quo corruption can

possibly affect judicial rulings and undermine public confidence in the integrity of the court. Several national polls show that at least 87 percent of the public believe that judicial campaign spending can influence judicial decision-making. We cannot afford increasing erosion of public confidence in the integrity of the judiciary.

It is only at the Circuit Court level, that any member of the Maryland Bar, may challenge an incumbent Judge, and may become a Judge without being screened or recommended by a judicial nominating committee, and without having received a gubernatorial appointment.

Senate Bill 596 amends the Maryland Constitution, while mitigating the appearance and/or reality that justice in the Circuit Court of Maryland might in some cases be up for sale. Your passage of Senate Bill 596 removes any appearance of pressure on certain Maryland lawyers and/or frequent litigants, of the need to contribute to campaigns of Circuit Court candidates before whom their cases are likely to be heard.

As the fiscal note points out, the Bill also established a 14-year term of office for circuit court and appellate court judges. For the purpose of implementing these changes, each circuit or appellate court judge already in office for an elected term on the effective date of this constitutional amendment continues in office until the next general election after the end of the elected term or until the judge attains the age of 70, whichever comes first; thereafter, continuance of the judge in office becomes subject to the provisions described above. In addition, each circuit or appellate court judge in office, but who has not been elected to or retained in office as of the effective date of this constitutional amendment, must be reappointed to that office within 15 days after the effective date of the amendments. Thereafter, continuance of the judge in office becomes subject to the retention method described above.

Finally, Senate Bill 596 must receive a super majority of each chamber, and ratification by Maryland voters (a heavy lift). Colleagues, we really need your help, and I therefore ask for your favorable report.