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Health and Government
Operations Committee

House Chair
Joint Committee on Fair Practices
and State Personnel Oversight

House Chair
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THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

February 26, 2020

Chairman Luke Clippinger
Vice Chair Vanessa E. Atterbeary
House Judiciary Committee
House Office Building, Room 101
Annapolis, MD 21401

Re: House Bill 1402 - Circuit Court Judges – Selection and Tenure

Dear Chair Clippinger, Vice Chair Atterbeary and Members of the House Judiciary Committee,

You have heard two bills – House Bills 11 and 518 – that would provide for appointment by the governor and retention elections for circuit court judges. There is strong support and strong opposition on both bills and we remain in the same decades-long stalemate regarding the selection of circuit court judges.

I am before you again with a bipartisan proposal and compromise solution for a structural change in the appointment process. Some of you have heard it before, as this is a reintroduction, the Daily Record's Advisory Editorial Board calls it "The 80 Percent Threshold." It works like this:

Upon a judicial vacancy, the governor would nominate a replacement. The nomination would go to the state Senate for confirmation. Confirmation would require a vote of at least 50 percent. If the vote were between 50 percent and 80 percent, the nominee would be confirmed and would have to run in an election, just like now. If the confirmation vote exceeded 80 percent, the nominee would be seated and would not have to run in an election.

For those concerned about the diversity of the bench, the 80 percent threshold would hold the governor's feet to the fire.

As a practical matter, governors and their prospective appointees, will want to avoid an election and this would invite an advice and consent process before a nominee is even put forward. Thus, judicial elections may disappear altogether and satisfy those who press the inherent problems with judicial campaigns.

For those concerned about losing the voice of the people, any dissatisfied constituency may press the General Assembly to deny the 80 percent threshold and force an election where a nominee will likely not enjoy the shelter of a slate.

This solution will lead to better qualified attorneys applying for appointment to the bench because of a strong possibility that the he or she would not have to face elections and, following the Senate vote, a judicial appointee who faced election would know where he or she stands and could make an educated decision whether to give up his or her private practice or decline the judicial appointment.

Sincerely,

Erek L. Barron
Delegate