Barron HB 1402

For literally a half-century, the Maryland Judiciary has been fighting in Annapolis to eliminate the right of Maryland citizens to elect their Circuit Court judges. Once again this year, the Maryland Judiciary, led by the Chief Judge of the Maryland Court of Appeals, is supporting legislation to totally end contested elections of Circuit Court judges.

During this same half-century, Maryland Governors have repeatedly ignored the legitimate aspirations of African-American lawyers to ascend to the bench by appointing white judges in disproportionate numbers in Baltimore City and in counties with significant African-American populations. Had the Judiciary's proposed bill been the law of Maryland over the course of the past half-century, Maryland's Governors would have gotten away with the disproportionate appointment of white attorneys to our State's Circuit Courts. Furious African-American lawyers would have had no recourse whatsoever.

I know this to be the case because, in the late 1970's, when the Governor of Maryland persisted in appointing one white lawyer after another to the Circuit Court of Baltimore City, I ran against one of his appointees and defeated him at the polls. Other African-American lawyers as well had to use the election process to defeat white judicial appointees and thereby to cause the State's courts to achieve at least some modicum of diversity. I hope we can all agree that the State's courts should reflect the diverse populations of our various counties. The bill being pressed by Chief Judge Barbara this year would remove from the people of Maryland their power to use the polls to achieve diversity in our trial court judges and would enable future Governors to totally control the makeup of Maryland's courts without any checks or balances at all.

But the choice need not be between a continuation of the current system of universal contested elections of Circuit Court judges on the one hand or the total elimination of contested elections of Circuit Court judges on the other hand. This year, Senators Pam Beidle and Chris West and Delegate Erek Barron have introduced creative compromise legislation containing provisions that would, in effect, provide considerably more that "half a loaf' to the partisans on each side of the argument. I am persuaded that their innovative bill makes eminent sense, and I support it.

Their bill would make a structural change in the appointment process. Upon a judicial vacancy, the Governor would nominate a replacement. The nomination would go to the State Senate for confirmation. If the vote on the floor of the State Senate were over 80% to confirm, the nominee would be seated and NOT have to run in an election at all. If the vote were under 50%, the nomination would fail. If the vote were between 50% and 80%, the nominee would be confirmed but would have to run in a contested election, as at present.

The Beidle/West/Barron bill would either solve or greatly ameliorate many of the objections to the current system of requiring all Circuit Court appointees to run in contested elections. Let me explain how: First, given the track record of Gubernatorial appointments in the State Senate over the course of the past 20 years, it seems quite likely that most appointees to the Circuit Courts would receive more than the required 80% of the Senate vote. Especially if the Governor were to take care to appoint individuals who are fully qualified to serve as judges and who are ethically sound, and if the Governor also paid due attention to the need to ensure diversity on the state bench, it is difficult for us to foresee more than occasional significant State Senate opposition to an appointee.

Second, one objection to the current system of universal contested elections is that many of the most qualified attorneys decline to apply for a Circuit Court judgeship. They are concerned that upon their appointment, they would have to close down their private law practices, get sworn in and then have to run for election; if they should lose the election, they would have to start from scratch to rebuild their law practices. The Beidle/West/Barron bill might lead to more and better attorneys applying for appointment to the bench for two reasons: (1) the greatly enhanced possibility that the judicial appointees of a prudent Governor would not have to face elections at all; and (2) the fact, following the vote by the State Senate, in the event that a judicial appointee failed to achieve the magic 80% and therefore would need to go through an election, he or she would know the nature of the opposition and would know that a contested election lies ahead and therefore could make an educated decision at that point whether to give up his or her private practice and go on the bench and then face the voters or alternatively, to decline the judicial appointment.

Third, another objection to the current system is that every single newly appointed Circuit Court judge has to run in a contested election. So, in the larger jurisdictions with regular judicial turnover, it has become common for "Sitting Judge" tickets to be formed, and the judge whose name starts with the letter closest to the end of the alphabet is the most imperiled "Sitting Judge". Under the new system that the Beidle/West/Barron bill would usher in, contested elections would be rare and would only affect the particular judge who failed to achieve 80% of the vote. The days of Sitting Judge tickets would be over, replaced by an occasional contested election involving a single judge who received less than 80% of the vote in the State Senate.

In my view, the new system envisioned by Beidle/West/Barron bill would eliminate contested judicial elections most of the time, thus giving the Maryland Judiciary nearly all that it wants. But as more than 20% of our State Senators are African-American, if a future Governor should ignore the legitimate aspirations of African American voters, particularly in Baltimore City, the African-American State Senators could force a contested election. In other words, the 80% threshold in the Beidle/West/Barron bill will hold a Governor's feet to the fire in terms of the continuing need for diversity on the bench. Presumably, Governors will want to avoid subjecting their appointees to elections and will thus strive to make diverse judicial appointments.