

In Support of HB 412 -- Testimony of Edward Fischman
(Chair – Montgomery County chapter of Our Revolution Maryland)

Chair Atterbeary, Vice-Chair Wilkins, and the Members of the Ways and Means Committee:

I offer this testimony in support of the bill, HB 412, and thank Delegate Foley for bringing this question before the House. I am testifying on behalf of Our Revolution Maryland which has been advocating for various reforms to our election and appointment rules to democratize rules which too often work to entrench and reinforce the influence of those in positions of power. In connection with this interest, members of our organization have stood for election or appointment to the county Democratic Central Committees, as well as the General Assembly, in hopes of advancing important reforms.

Elections are an essential piece of any democratic system. They are not in themselves necessarily very democratic, though. We see in many countries how elections are used as a fig leaf to claim public legitimacy in a process which gives the citizens little actual choice. In our country, there are many dynamics which interfere with realizing a fully democratic system.

One aspect of our political process which seriously impacts the choices available to voters is the vacancy appointment process. The change being proposed in HB 412 is far cheaper than, say, public financing for all General Assembly races – which is a reform Our Revolution has long supported. And, in confining special elections to the Presidential primary, it is calculated to have little or no fiscal impact at all.

Still, it would do much to democratize our electoral and political process – and thereby enhance the integrity of the Legislature. For those appointments which would terminate with a special election in what is effectively a mid-term election, it would mean that an appointee seeking full election by constituents would have to run on his or her own, without the incalculably enormous benefit of slating with the other incumbent representative from the district.

I was elected to the Montgomery County Democratic Central Committee in 2022, a role I sought to advocate for the very reform which is the subject of HB 412. I speak for myself, and not the Committee or its members, but I think my experience in the vacancy process may be instructive, so I feel it is important to state my interest.

Especially in Montgomery County, we have gained a lot of experience with the current process, given that we filled 5 vacancies in 2023. I and other members of the committees have certainly taken our charge seriously to give our best advice to the Governor on filling those vacancies. Few voters in a regular primary have an opportunity to meet with nearly every candidate, to interview them, perhaps for even an hour or more. Given the deep interrogation and conversation we had with candidates, I would like to believe our votes were in some way qualitatively better than laypersons' in a regular primary, but I am not convinced this is true.

We struggle with balancing many factors, which we all do inconsistently. In seeking reform of the Central Committee rules, I was joined by several colleagues, but we met resistance from still others in our committee. Some covet this ability to advance minority candidates to the Legislature, yet even some of those folks have voted to nominate non-minority candidates.

I have not been consistent in my votes either. In coming to the committee, I wanted to support the candidate I felt was the most progressive. Even I didn't stay true to that in every race. Mindful of the fact that I was voting in place of the voters in those districts, I tried to respect their votes for (or against) applicants who had already faced the voters, and especially those applicants who held public office, even when that went against my personal preference.

Ultimately, the process does not achieve some Platonic ideal of representative democracy, and it doesn't engage the voters in choosing their representatives. Many are simply appointed, then returned, perhaps unchallenged, slating with the rest of the district team.

I have advocated for a reform which would retain the vacancy appointment process in some form, but which would absolutely restrict the ability of those appointed to stand for election as an incumbent. As recently happened in the U.S. Senate when the incumbent died during primary campaign to replace her, the California Governor chose someone who was not seeking election, and she decided to be a mere placeholder. This ensures continuous representation for the constituents, and when one vote might be crucial, it avoids the complications from a vacancy. However, this allows voters to start with a clean slate in the next vote.

To my mind, it is the incumbency which central committees bestow that is the most deeply problematic aspect. The change I seek could be complementary to special elections proposed in HB 412. It would simply preclude the appointee from participating in the next (special) election.

This should have a lot of appeal to members concerned whether an incumbent could mount a campaign when the vote comes on the heels of the end of the legislative sessions. This concern has led some to propose a carve-out to the general prohibition against fundraising during session. That raises still other concerns, but all those concerns vanish if the appointee knows s/he will be ineligible to run for the seat in the ensuing special or general election.

Some have wondered about the constitutionality of this idea. I point them to the very recent decision by the Oregon Supreme Court which upheld a voter-approved state constitutional rule that will now preclude 10 Republicans from reelection because they violated the new absences limit imposed by the new Constitutional amendment.

I offer this 'placeholder' proposal as an amendment, but with no confidence that it will be adopted. Despite its obvious appeal, I expect it is a step too far for members of the General Assembly, though I think it would be approved resoundingly if put to the voters in November.

On my own behalf, and on behalf of thousands of Our Revolution members in Maryland, I urge the committee to issue a favorable report on BB 412, with or without amendment.