

**Politics News**

# MoCo Politics: 3 options offered to reform parties' control of vacancies in General Assembly

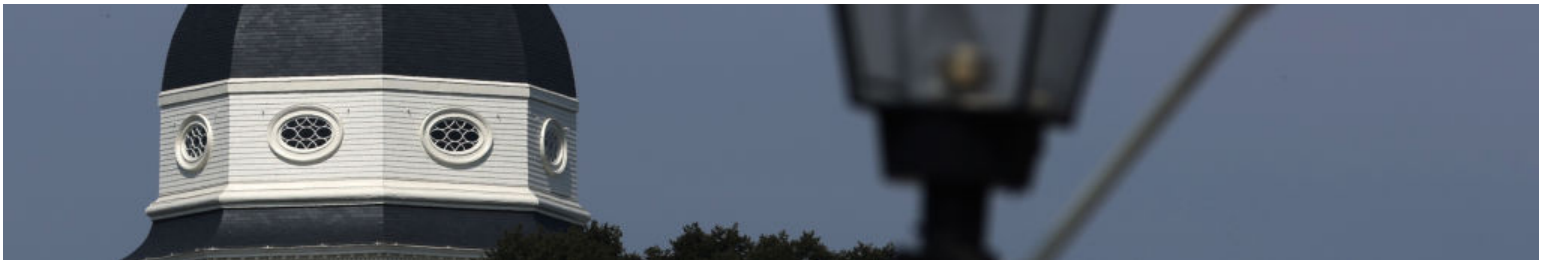
One seeks transparency, takes aim at cronyism; other two wrest more power from parties

by **Louis Peck**

January 26, 2024 10:22 am



NEWSLETTERS



As a Maryland State flag flies in the foreground, the Maryland State House is seen on August 21, 2023 in Annapolis, Maryland. Credit: Photo by Alex Wong/Getty Images

*(Editor's note: This is the second of two columns examining how vacancies in the Maryland General Assembly are filled, the controversies the system has created—and the options being proposed.)*

In 2020, the daughter of a Maryland House leader voted for herself to fill a legislative vacancy. She was part of a three-person plurality out of seven voting Baltimore City Democratic Central Committee members who appointed her to represent the 45<sup>th</sup> District in the House of Delegates

**Controversy surrounding Chanel Branch's appointment** was fueled further when the media was barred from half of the meeting. Still, then-Gov. Larry Hogan (R) appointed her, underscoring the limited authority that governors have in filling vacancies under the wording of the state constitution. (Branch subsequently fell short in her bid for a full four-year term in the 2022 election.)

In Montgomery County, four members of the Democratic Central Committee (MCDCC) were elevated by their colleagues to the General Assembly from 2016 through 2022, spurring complaints of a conflict of interest. (In 2023, when appointments to the administration of Gov. Wes Moore (D) created five vacancies to fill by the MCDCC, no members of the committee were tapped to fill them—although two MCDCC members did make unsuccessful bids for the openings.)

The conflict-of-interest debate within the MCDCC came to a head last May, when **the committee narrowly defeated a rule**—on a 12-12 tie vote in the 24-member committee—to bar members seeking legislative vacancies from voting on their own nominations.

Such controversies illustrate why the current regimen of empowering political committees to fill legislative vacancies—which 90 years ago supplanted a system of special elections previously included in Maryland's constitution—has regularly spurred charges of backroom deals and lack of transparency. In turn, it has given rise to two pieces of legislation this year that call for a return to at least a limited system of special elections, along with another bill aimed at reforming the current appointment process throughout the state.

Advertisement

However, while reform proponents are intensifying their efforts this year, there appears to be limited consensus on how best to move forward—amid concerns ranging from the traditionally limited turnout of special elections, to preventing seats from remaining vacant during key legislative periods, to providing special election candidates ample opportunity to raise necessary campaign funds.

## Palakovich Carr and Griffith: More transparency, less cronyism

Legislation first proposed in 2023 by Dels. Julie Palakovich Carr (D-Rockville) and Mike Griffith (R-Harford County) and reintroduced in this year's legislative session, with the goal of requiring greater uniformity and transparency across the state when the central committees of both major parties in the state's 24 major jurisdictions (23 counties and the city of Baltimore) are called upon to fill vacancies.

To forestall a repeat of the 2020 Baltimore episode, the bill includes provisions requiring that interviews to fill a vacancy and the subsequent vote by a political committee be conducted in public, along with ensuring that the existence of a vacancy and meetings scheduled to discuss it are advertised "in a conspicuous manner."

### Advertisement

Also included in the bill is language reading: "A member of the central committee who has applied to fill the vacancy shall recuse themselves from voting on the individual to fill the vacancy." As Palakovich Carr noted in an interview: "In Montgomery County, that is probably the most meaningful one because ...I think our Democratic central committee already has adopted all of the rest of the elements of the bill and has had [them] in their bylaws for a while."

MCDCC's conflict-of-interest vote last May followed an often-intense war of words, with the Maryland Democratic Party insisting in a private memo that state party bylaws prohibited local party committees from imposing such restrictions—and MCDCC supporters of the rule challenging that assertion in a written response. A month before the MCDCC vote on the rule, then-state Democratic Party Chair Yvette Lewis appeared before the committee to argue against it, in a presentation that was privately viewed as heavy-handed by several members from differing camps of the faction-ridden MCDCC.

It remains uncertain whether the legislation by Palakovich Carr dealing with the procedures of local committees in considering vacancies ultimately will be considered as a freestanding bill—or perhaps merged with one of at least two approaches for reestablishing a special elections structure. Both pending special election proposals—requiring a constitutional amendment that would need to be approved by Maryland voters—would leave intact the ability of local political committees to fill vacancies, although to widely varying degrees.

Advertisement

## Foley: Appointments followed by elections during presidential election years

The more incremental of the two plans has been introduced by Del. Linda Foley (D-Potomac), a former MCDCC chair who initially entered the General Assembly via appointment two years ago. First introduced by Foley in 2023, the bill mirrors a plan that twice overwhelmingly passed the Senate in recent years, only to fail to emerge from the House of Delegates' Ways and Means Committee.

This year, Foley's legislation has the cosponsorship of 25 of her House of Delegates colleagues, including 13 other members of Montgomery County's 26-person House delegation. Besides Palakovich Carr, the Montgomery cosponsors include Dels. Gabriel Acevero (D-Montgomery Village), David Fraser-Hidalgo (D-Boyds), Aaron Kaufman (D-Chevy Chase), Lesley Lopez (D-Germantown), Sara Love (D-Bethesda), Lily Qi (D-North Potomac), Emily Shetty (D-Kensington), Jared Solomon (D-Kensington), Ryan Spiegel (D-Gaithersburg), Vaughn Stewart (D-Rockville), Joe Vogel (D-Rockville) and Chao Wu (D-Clarksville), a Howard County resident whose district includes a portion of northern Montgomery.

Under Foley's bill, the power to fill General Assembly vacancies throughout the legislature's four-year term would remain in place—with the county committee of whatever party had previously held the seat retaining the power to appoint a replacement. But it would require those appointed to vacancies in the first year of the legislative term to run in the second year—when only the presidency and other federal offices, along with a handful of local offices, are on the Maryland ballot.

Advertisement

The language of Foley's bill would require any vacancy occurring 55 days or more prior to the filing deadline in a presidential year—generally February—be subject to a special primary and special general election open to candidates of both parties. In doing so, it takes aim at complaints that, at present, those appointed to legislative vacancies can serve up to a full four-year term without having faced the rank-and-file electorate.

Sen. Clarence Lam (D-Howard County), who guided a similar plan through the Senate in 2021 and 2022, said he would have preferred a more comprehensive special elections scheme—triggered within a limited time period of when the vacancy occurred. But Lam said he and his cosponsor, then-Sen. Michael Hough (R-Frederick County) "kept hearing about the cost issue."

## Kagan: special elections

This year, a more extensive plan for special elections — filed by Sen. Cheryl Kagan (D-Rockville) — seeks to address the cost issue with language that “directs” special primaries and special general elections to be conducted by mail ballot, although it would also require “at least one” voting center in a given district where ballots could be cast in person.

Advertisement

“As voters have become more accustomed to mail-in ballots, I believe that offers the best solution for filling vacancies,” Kagan said in an interview. Her proposal comes amid widespread acceptance and use of mail balloting in the wake of the pandemic; it also coincides with a changing of the guard at the Maryland State Board of Elections seen as favorable to implementing a special elections regimen.

“The administration of a special election is not something that Maryland’s elections division has been favorable toward for a number of reasons [relating] to logistics and costs,” state Senate President Bill Ferguson told the District 18 Democratic Breakfast Club this past fall. His comments were viewed as a not-so-subtle reference to long-time state elections administrator Linda Lamone, an often-controversial figure who retired last fall after more than a quarter of a century at the State Board of Elections.

But Kagan’s sweeping proposal also faces several hurdles. It would require open elections in the first three years of a term, allowing the committee of the party that previously held the seat to appoint only in the fourth and final year—thereby depriving committees around the state of leverage, and some members of those committees of a political launching pad.

Advertisement

“If you asked central committee members, there are probably some of them who feel like

‘Getting myself on the central committee is one small ticket to getting myself into the legislature,’ Lam observed. “How many of them will admit that, I don’t know.”

Ferguson, in an interview during a November visit to Montgomery County, reiterated his previously voiced support for reform of the current system, but was skeptical of more comprehensive special

elections schemes along the lines of Kagan's bill "because you just have this problem with the waterfall of if a senator leaves, a delegate goes and you get mail-in ballots; it's election after election after election. I just think that's going to be a bridge too far."

Advertisement

Kagan indicated she is open to changes in her proposal. "The current system is not working, and I am thrilled that [Senate] President Ferguson shares my view that we need a solution," she said, adding: "Legislators and advocates have different ideas as to how this should work, and.... in my opinion, almost anything that moves the process forward toward more elections and fewer appointments is better than we have now."

## Pros and cons

By the same token, Kagan did not mince words in criticizing the approach of holding a special election in a presidential year. "I hate it: I think it's a terrible idea," she said. "I don't think voters will pay sufficient attention to a legislative vacancy at the very bottom of a crowded presidential ballot." She contended that competing in a special election in those circumstances "also makes the campaign too expensive and, in that way, can preclude many candidates from running or winning."

Kagan's legislation calls for a special election to fill a legislative vacancy "as expeditiously as practicable" after it occurs, with the governor setting the date for a special primary and general election "within 10 days" of the vacancy.

Advertisement

But, to comply with federal statutes, it also would require that the timing "shall allow at least 45 days between the date a local board makes an absentee ballot available to an absent uniformed services or overseas voter...and the date of the special election." Skeptics suggest this could leave seats unfilled and voters unrepresented for all or part of the annual 90-day legislative session from January through April, if the vacancy occurred just prior to the start of the session or during it.

"Because of the nature of Maryland's 90-day annual General Assembly session, special elections are neither possible nor desirable in many cases," Foley said in testimony before the House Ways and Means Committee last February, echoing some of the arguments put forth when the current system

of appointment was established nearly a century ago. She contended her legislation “by maintaining the current appointment process...ensures that no district goes unrepresented or underrepresented during any legislative session.”

## Fundraising impact

But Jheanelle Wilkins, who chairs the Ways and Means subcommittee that failed to act on Foley’s bill last year—and that did not move the similar legislation by Lam that cleared the Senate in 2021 and 2022—cited obstacles that appointees who must quickly face a special election might face.

Advertisement

“What happens when someone gets appointed in December and they are going to be on the [primary] ballot in May—and, on top of that, they cannot raise funds for three months? And so how do we make sure this is fair to all of the candidates who are seeking seats?” Wilkins asked during an interview, alluding to the current ban on fundraising by incumbent legislators during a 90-day session.

Concerns involving candidate fundraising—particularly for women and persons of color, for whom fundraising often has been more of a hurdle—have been a frequent refrain in recent debates over special election legislation.

It may also help to explain why the Maryland Senate has embraced special election legislation in recent years, while the House has not. While, in most cases, those who have received Senate appointments are sitting members of the House of Delegates who often have had years to build up their campaign treasuries and be prepared for a primary challenge, those appointed to the House are often new to campaigning—and arrive in Annapolis with little in the way of campaign funds.

Advertisement

Foley responded in her testimony last year by pointing to her own appointment to the House in December 2021. “I had a little more than a month to raise money for a primary election challenge in 2022,” she said. “Despite the short time frame, the incumbency and experience I gained from serving one 90-day session and the fundraising I undertook before the legislative session began were

enough for me to head off a very competitive primary election challenge and conduct a successful election campaign.”

## Support for reform

Another key question — despite a recent statewide poll showing an 85% majority in favor of special elections to fill legislative vacancies—is whether there is sufficient enthusiasm outside of Montgomery County to pass legislation this year.

“I think it is very acute in Montgomery County and to a degree in Prince George’s County, too, because there have been so many changes...with the [Moore] administration selecting members of the legislature” to serve in the executive branch, Ferguson said. He added: “I wouldn’t say it is a top-driving issue in most places...but I do think it is something we should move on, because it’s the right thing to do.

### Advertisement

He continued: “The whole problem is there is no clear way to solve it. But I do think there is kind of a growing consensus of this hybrid approach,” referring to the presidential year special election legislation put forth by Foley and earlier by Lam.

Amid the disagreements, advocates of moving to special elections appear confident that such a change is on the horizon. “I think we will eventually get to a place where we will have special elections,” Lam said. “We’re probably in a [favorable] spot right now, just because the number of people who have been appointed, particularly from Montgomery County.”

Of the current appointment system, Lam added: “I think it’s a vestige of the past, it’s a patronage system that will probably eventually go its way. We’re just not quite there yet.”

*(Editor’s note: A hearing on Kagan’s special bill establishing special elections and the Senate companion measure to Palakovich Carr’s legislation—sponsored by Lam—will be held at 1 p.m. Jan. 30 before the Senate Education, Energy and the Environment Committee in Annapolis. On Feb. 6, hearings on the Palakovich Carr bill and Foley’s special elections proposal will take place before the House Ways and Means Committee at 1 p.m. Both can be viewed via a YouTube livestream.)*



Louis Peck ([lou.peck@moco360.media](mailto:lou.peck@moco360.media)) has covered and supervised coverage of government and politics at the national, state and local level for the past five decades.

---

© 2024 MoCo360.

Proudly powered by Newspaper by Automattic