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MARYLAND JUDICIAL COUNCIL LEGISLATIVE COMMITTEE

MEMORANDUM

TO: House Judiciary Committee
House Ways and Means Committee

FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523

RE: House Bill 44
Election Law - Circuit Court Judges – Nonpartisan Elections

DATE: January 11, 2025
(2/12)

POSITION: Oppose

The Judiciary appreciates the intent of House Bill 44 and supports efforts to reduce partisanship in judicial elections, in order to meet the important goal of maintaining judicial independence and impartiality. However, House Bill 44 raises certain concerns and fails to address others. As such, the Judiciary favors the approach recommended by the Workgroup to Study Judicial Elections. That approach would require circuit court judges to stand for retention, rather than contested, elections, following a thorough vetting process and gubernatorial appointment with the advice and consent of the Senate. The link to the Workgroup's comprehensive report and recommendations may be found at the following link: <https://online.flippingbook.com/view/994939268/>.

The Workgroup was formed to perform a fair, balanced, and comprehensive examination of selecting and retaining trial judges. It was comprised of a diverse group of community members, lawyers, appointed and elected judges, law school

deans, and policy experts. The Workgroup studied relevant data and research; held public hearings; and received testimony and input from academic and policy centers; state, local and specialty bars; citizens; members of the executive and legislative branches; and various other interested persons.

As noted on page 54 of the Workgroup report:

[R]etention elections obviate the need for judges to raise money for elections. The importance of this to the independence of judges cannot be overstated. The Workgroup found that in Maryland, and in many other states, the overwhelming majority of funds raised by Circuit Court or trial judges in recent contested elections is from lawyers who will appear before the very judge who is raising the money. The lawyers are the most interested in such races and, thus, the natural supporters. However, the appearance and actuality of judges raising money from interested lawyers who will seek favorable rulings from the judges raises fair concerns about judicial independence. Moreover, while the Maryland Code of Judicial Conduct appropriately prohibits judges from attending political fundraising events, there is a necessary exemption for candidates running for election. Thus, judges running in a contested election create the appearance of violating this very requirement by attending their own and other political fundraising events. Contested elections create an array of potential ethical violations and untoward appearances that serve to undermine the public's trust and confidence in this branch of government."

Rather than obviating the need for judges to raise money, House Bill 44 extends the fundraising cycle beyond the primary election for certain candidates. This extension fails to reduce the issues identified by the Workgroup and may instead exacerbate the politicization of judicial elections.

The propriety of the election of judges to the circuit courts of Maryland has been vigorously debated since the 1850-51 Constitutional Convention. A primary goal has always been, to the extent possible, to separate the election of judiciary officials from influence by political organizations.

The concept of permitting judicial candidates to stand for election without a prior nomination or primary process was examined as part of the comprehensive review of judicial elections in 1996 by the Commission on the Future of Maryland Courts. The Commission, a bipartisan assembly composed of distinguished members from each branch of the Maryland government, ultimately recommended that circuit court judges should be appointed by the Governor from a list submitted by a

judicial nominating commission, confirmed by the Senate, and thereafter subject to retention elections. The Commission explained:

[A]ll judges initially appointed by Governors are appointed from lists submitted by nominating commissions consisting of lawyers and laypersons. Those commissions receive detailed applications from persons seeking appointment. They receive recommendations from various bar associations and letters from other interested persons. They interview the applicants. From all of this material and their own perceptions from the interviews, they nominate the persons they believe most qualified. Governors also receive the applications of the nominees, along with whatever other material may be sent. Governors usually interview the nominees before making a choice. The process involves a careful examination of the qualifications of all who seek the appointment and the elimination of those thought to be unqualified or less qualified.

That review, that screening, is entirely absent when a challenger is initially elected. *Commission on the Future of Maryland Courts, Final Report Presented to the Governor and General Assembly of Maryland, Annapolis, at 58 (1996).*

The Commission's primary concern when a candidate in a judicial election has been neither appointed nor nominated was that "[q]uality control at the very beginning is absent." *Id.* at 59. House Bill 44 also does not address those concerns.

The 2024 Workgroup to Study Judicial Selection reached a similar conclusion.

The Judiciary continues to support efforts to make the process by which judges are elected less political. Given the thorough and comprehensive report and recommendations of the Workgroup to Study Judicial Selection, the Judiciary suggests that the Workgroup's approach is best suited to meet that aim.

cc: Hon. Chao Wu
Judicial Council
Legislative Committee
Kelley O'Connor