

CONSTITUTIONAL AMENDMENT

D1  
HB 94/92 - JUD

7lr0768

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**By: Delegates Dembrow and Palumbo**

Introduced and read first time: January 17, 1997

Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **Courts of Appeals - Name Change**

3 FOR the purpose of changing the name of the Court of Appeals to the Supreme Court;  
4 changing the name of the Court of Special Appeals to the Appellate Court;  
5 clarifying language; providing for a certain date for this amendment to take effect;  
6 and submitting this amendment to the qualified voters of the State of Maryland for  
7 their adoption or rejection.

8 BY proposing an amendment to the Constitution of Maryland  
9 Article II - Executive Department  
10 Section 6(c) and (g)

11 BY proposing an amendment to the Constitution of Maryland  
12 Article III - Legislative Department  
13 Section 5, 30, and 52(11)

14 BY proposing an amendment to the Constitution of Maryland  
15 Article IV - Judiciary Department  
16 Section 1, 3, 3A(a), 4B(a) and (b), 5A(c) and (d), 10(a), 14, 15, 16, 17, 18(b), 22,  
17 and 41E

18 BY proposing an amendment to the Constitution of Maryland  
19 Article V - Attorney-General and State's Attorneys  
20 Section 6

21 BY proposing an amendment to the Constitution of Maryland  
22 Article XVII - Quadrennial Elections  
23 Section 3

24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
25 MARYLAND, (Three-fifths of all the members elected to each of the two Houses  
26 concurring), That it be proposed that the Constitution of Maryland read as follows:

2

**1 Article II - Executive Department**

2 6.

3 (c) The General Assembly, by the affirmative vote of three-fifths of all its  
4 members in joint session, may adopt a resolution declaring that the Governor or  
5 Lieutenant Governor is unable by reason of physical or mental disability to perform the  
6 duties of his office. When action is undertaken pursuant to this subsection of the  
7 Constitution, the officer who concludes that the other officer is unable, by reason of  
8 disability to perform the duties of his office shall have the power to call the General  
9 Assembly into Joint Session. The resolution, if adopted, shall be delivered to the  
10 SUPREME Court [of Appeals], which then shall have exclusive jurisdiction to determine  
11 whether that officer is unable by reason of the disability to perform the duties of his  
12 office. If the SUPREME Court [of Appeals] determines that such officer is unable to  
13 discharge the duties of his office by reason of a permanent disability, the office shall be  
14 vacant. If the SUPREME Court [of Appeals] determines that such officer is unable to  
15 discharge the duties of his office by reason of a temporary disability, it shall declare the  
16 office to be vacant during the time of the disability and the SUPREME Court shall have  
17 continuing jurisdiction to determine when the disability has terminated. If the General  
18 Assembly and the SUPREME Court [of Appeals], acting in the same manner as described  
19 above, determine that the Governor-elect or Lieutenant Governor-elect is unable by  
20 reason of physical or mental disability to perform the duties of the office to which he has  
21 been elected, he shall be disqualified to assume office.

22 (g) The SUPREME Court [of Appeals] shall have original and exclusive  
23 jurisdiction to adjudicate disputes or questions arising from the failure of the  
24 Governor-elect to take office, or the service of the Lieutenant Governor or President of  
25 the Senate as acting Governor, or the creation of a vacancy in the office of Governor or  
26 Lieutenant Governor by reason of disability, or the succession to the office of Governor  
27 or Lieutenant Governor, or the exercise of the powers and duties of a successor to the  
28 office of Governor.

**29 Article III - Legislative Department**

30 5.

31 Following each decennial census of the United States and after public hearings, the  
32 Governor shall prepare a plan setting forth the boundaries of the legislative districts for  
33 electing of the members of the Senate and the House of Delegates.

34 The Governor shall present the plan to the President of the Senate and Speaker of  
35 the House of Delegates who shall introduce the Governor's plan as a joint resolution to  
36 the General Assembly, not later than the first day of its regular session in the second year  
37 following every census, and the Governor may call a special session for the presentation  
38 of his plan prior to the regular session. The plan shall conform to Sections 2, 3 and 4 of  
39 this Article. Following each decennial census the General Assembly may by joint  
40 resolution adopt a plan setting forth the boundaries of the legislative districts for the  
41 election of members of the Senate and the House of Delegates, which plan shall conform  
42 to Sections 2, 3 and 4 of this Article. If a plan has been adopted by the General Assembly  
43 by the 45th day after the opening of the regular session of the General Assembly in the  
44 second year following every census, the plan adopted by the General Assembly shall

3

1 become law. If no plan has been adopted by the General Assembly for these purposes by  
2 the 45th day after the opening of the regular session of the General Assembly in the  
3 second year following every census, the Governor's plan presented to the General  
4 Assembly shall become law.

5           Upon petition of any registered voter, the SUPREME Court [of Appeals] shall have  
6 original jurisdiction to review the legislative districting of the State and may grant  
7 appropriate relief, if it finds that the districting of the State is not consistent with  
8 requirements of either the Constitution of the United States of America, or the  
9 Constitution of Maryland.

10 30.

11           Every bill, when passed by the General Assembly, and sealed with the Great Seal,  
12 shall be presented by the presiding officer of the house in which it originated to the  
13 Governor for his approval. All bills passed during a regular or special session shall be  
14 presented to the Governor for his approval no later than 20 days after adjournment.  
15 Within 30 days after presentment, if the Governor approves the bill, he shall sign the  
16 same in the presence of the presiding officers and Chief Clerks of the Senate and House  
17 of Delegates. Every Law shall be recorded in the office of the SUPREME Court [of  
18 Appeals], and in due time, be printed, published and certified under the Great Seal, to  
19 the several Courts, in the same manner as has been heretofore usual in this State.

20 52.

21           (11) For the purpose of making up the Budget, the Governor shall require from the  
22 proper State officials (including all executive departments, all executive and  
23 administrative offices, bureaus, boards, commissions and agencies that expend or  
24 supervise the expenditure of, and all institutions applying, for State moneys and  
25 appropriations) such itemized estimates and other information, in such form and at such  
26 times as directed by the Governor. An estimate for a program required to be funded by a  
27 law which will be in effect during the fiscal year covered by the Budget and which was  
28 enacted before July 1 of the fiscal year prior to that date shall provide a level of funding  
29 not less than that prescribed in the law. The estimates for the Legislative Department,  
30 certified by the presiding officer of each House, of the Judiciary, as provided by law,  
31 certified by the Chief Judge of the SUPREME Court [of Appeals], and for the public  
32 schools, as provided by law, shall be transmitted to the Governor, in such form and at  
33 such times as directed by the Governor, and shall be included in the Budget without  
34 revision.

#### 35           **Article IV - Judiciary Department**

36 1.

37           The Judicial power of this State is vested in a SUPREME Court [of Appeals], such  
38 intermediate courts of appeal as the General Assembly may create by law, Circuit Courts,  
39 Orphans' Courts, and a District Court. These Courts shall be Courts of Record, and each  
40 shall have a seal to be used in the authentication of all process issuing from it.

41 3.

42           Except for the Judges of the District Court, the Judges of the several Courts other  
43 than the SUPREME Court [of Appeals] or any intermediate courts of appeal shall,

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1 subject to the provisions of Section 5 of this Article of the Constitution, be elected in  
 2 Baltimore City and in each county, by the qualified voters of the city and of each county,  
 3 respectively, all of the said Judges to be elected at the general election to be held on the  
 4 Tuesday after the first Monday in November, as now provided for in the Constitution.  
 5 Each of the said Judges shall hold his office for the term of fifteen years from the time of  
 6 his election, and until his successor is elected and qualified, or until he shall have attained  
 7 the age of seventy years, whichever may first happen, and be reeligible thereto until he  
 8 shall have attained the age of seventy years, and not after. In case of the inability of any  
 9 of said Judges to discharge his duties with efficiency, by reason of continued sickness, or  
 10 of physical or mental infirmity, it shall be in the power of the General Assembly,  
 11 two-thirds of the members of each House concurring, with the approval of the Governor  
 12 to retire said Judge from office.

13 3A.

14 (a) Any former judge, except a former judge of the Orphans' Court, may be  
 15 assigned by the Chief Judge of the SUPREME Court [of Appeals], upon approval of a  
 16 majority of the court, to sit temporarily in any court of this State, except an Orphans'  
 17 Court, as provided by law.

18 4B.

19 (a) (1) The Commission on Judicial Disabilities has the power to:

20 (i) Investigate complaints against any judge of the SUPREME Court  
 21 [of Appeals], any intermediate courts of appeal, the circuit courts, the District Court of  
 22 Maryland, or the orphans' court; and

23 (ii) Conduct hearings concerning such complaints, administer oaths  
 24 and affirmations, issue process to compel the attendance of witnesses and the production  
 25 of evidence, and require persons to testify and produce evidence by granting them  
 26 immunity from prosecution or from penalty or forfeiture.

27 (2) The Commission has the power to issue a reprimand and the power to  
 28 recommend to the SUPREME Court [of Appeals] the removal, censure, or other  
 29 appropriate disciplining of a judge or, in an appropriate case, retirement.

30 (3) All proceedings, testimony, and evidence before the Commission shall  
 31 be confidential and privileged, except as provided by rule of the SUPREME Court [of  
 32 Appeals]; the record and any proceeding filed with the SUPREME Court [of Appeals]  
 33 shall lose its confidential character, except as ordered by the SUPREME Court [of  
 34 Appeals].

35 (4) No judge shall participate as a member of the Commission in any  
 36 proceedings involving that judge's own conduct, and the Governor shall appoint another  
 37 judge as a substitute member of the Commission for those proceedings.

38 (5) The SUPREME Court [of Appeals] shall prescribe by rule the means to  
 39 implement and enforce the powers of the Commission and the practice and procedure  
 40 before the Commission.

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1 (b) (1) Upon any recommendation of the Commission, the SUPREME Court [of  
2 Appeals], after a hearing and upon a finding of misconduct while in office, or of  
3 persistent failure to perform the duties of the office, or of conduct prejudicial to the  
4 proper administration of justice, may remove the judge from office or may censure or  
5 otherwise discipline the judge, or the SUPREME Court [of Appeals], after hearing and  
6 upon a finding of disability which is or is likely to become permanent and which seriously  
7 interferes with the performance of the judge's duties, may retire the judge from office.

8 (2) A judge removed under this section, and the judge's surviving spouse,  
9 shall have the rights and privileges accruing from the judge's judicial service only to the  
10 extent prescribed by the order of removal.

11 (3) A judge retired under this section shall have the rights and privileges  
12 prescribed by law for other retired judges.

13 (4) No judge of the SUPREME Court [of Appeals] shall sit in judgment in  
14 any hearing involving that judge's own conduct.

15 5A.

16 (c) The continuance in office of a judge of the SUPREME Court [of Appeals] is  
17 subject to approval or rejection by the registered voters of the appellate judicial circuit  
18 from which he was appointed at the next general election following the expiration of one  
19 year from the date of the occurrence of the vacancy which he was appointed to fill, and at  
20 the general election next occurring every ten years thereafter.

21 (d) The continuance in office of a judge of the APPELLATE Court [of Special  
22 Appeals] is subject to approval or rejection by the registered voters of the geographical  
23 area prescribed by law at the next general election following the expiration of one year  
24 from the date of the occurrence of the vacancy which he was appointed to fill, and at the  
25 general election next occurring every ten years thereafter.

26 10.

27 (a) (1) The Clerks of the Courts shall have charge and custody of records and  
28 other papers and shall perform all the duties which appertain to their offices, as are  
29 regulated by Law.

30 (2) The office and business of the Clerks, in all their departments, shall be  
31 subject to and governed in accordance with rules adopted by the SUPREME Court [of  
32 Appeals] pursuant to Section 18 of this article.

33 14.

34 The SUPREME Court [of Appeals] shall be composed of seven judges, one from  
35 the First Appellate Judicial Circuit consisting of Caroline, Cecil, Dorchester, Kent,  
36 Queen Anne's, Somerset, Talbot, Wicomico, and Worcester Counties; one from the  
37 Second Appellate Judicial Circuit consisting of Baltimore and Harford Counties; one  
38 from the Third Appellate Judicial Circuit, consisting of Allegany, Carroll, Frederick,  
39 Garrett, Howard, and Washington Counties; one from the Fourth Appellate Judicial  
40 Circuit, consisting of Prince George's County; one from the Fifth Appellate Judicial  
41 Circuit, consisting of Anne Arundel, Calvert, Charles, and St. Mary's Counties; one from  
42 the Sixth Appellate Judicial Circuit, consisting of Baltimore City; and one from the

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1 Seventh Appellate Judicial Circuit, consisting of Montgomery County. The Judges of the  
2 SUPREME Court [of Appeals] shall be residents of their respective Appellate Judicial  
3 Circuits. The term of each Judge of the SUPREME Court [of Appeals] shall begin on the  
4 date of his qualification. One of the Judges of the SUPREME Court [of Appeals] shall be  
5 designated by the Governor as the Chief Judge. The jurisdiction of the SUPREME Court  
6 [of Appeals] shall be co-extensive with the limits of the State and such as now is or may  
7 hereafter be prescribed by law. It shall hold its sessions in the City of Annapolis at such  
8 time or times as it shall from time to time by rule prescribe. Its session or sessions shall  
9 continue not less than ten months in each year, if the business before it shall so require,  
10 and it shall be competent for the judges temporarily to transfer their sittings elsewhere  
11 upon sufficient cause. The salary of each Judge of the SUPREME Court [of Appeals]  
12 shall be that now or hereafter prescribed by the General Assembly and shall not be  
13 diminished during his continuance in office. Five of the judges shall constitute a quorum,  
14 and five judges shall sit in each case unless the SUPREME Court shall direct that an  
15 additional judge or judges sit for any case. The concurrence of a majority of those sitting  
16 shall be sufficient for the decision of any cause, and an equal division of those sitting in a  
17 case has the effect of affirming the decision appealed from if there is no application for  
18 reargument as hereinafter provided. In any case where there is an equal division or a  
19 three to two division of the SUPREME Court a reargument before the full Court of seven  
20 judges shall be granted to the losing party upon application as a matter of right.

21 15.

22 Any judge of the SUPREME Court [of Appeals] or of an intermediate court of  
23 appeal who heard the cause below either as a trial judge or as a judge of any intermediate  
24 court of appeal as the case may be shall not participate in the decision. In every case an  
25 opinion, in writing, shall be filed within three months after the argument, or submission of  
26 the cause; and the judgment of the SUPREME Court [of Appeals] shall be final and  
27 conclusive.

28 16.

29 Provision shall be made by Law for publishing Reports of all causes, argued and  
30 determined in the SUPREME Court [of Appeals] and in the intermediate courts of  
31 appeal, which the judges thereof, respectively, shall designate as proper for publication.

32 17.

33 There shall be a Clerk of the SUPREME Court [of Appeals], who shall be  
34 appointed by and shall hold his office at the pleasure of said SUPREME Court [of  
35 Appeals].

36 18.

37 (b) The Chief Judge of the SUPREME Court [of Appeals] shall be the  
38 administrative head of the Judicial system of the State. He shall from time to time  
39 require, from each of the judges of the Circuit Courts, of the District Court and of any  
40 intermediate courts of appeal, reports as to the judicial work and business of each of the  
41 judges and their respective courts. He may, in case of a vacancy, or of the illness,  
42 disqualification or other absence of a judge or for the purpose of relieving an  
43 accumulation of business in any court assign any judge except a judge of the Orphans'  
44 Court to sit temporarily in any court except an Orphans' Court. Any judge assigned by the

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1 Chief Judge of the SUPREME Court [of Appeals] pursuant to this section has all the  
 2 power and authority pertaining to a judge of the court to which he is so assigned; and his  
 3 power and authority shall continue with respect to all cases (including any motion, or  
 4 other matters incidental thereto) which may come before him by virtue of such  
 5 assignment until his action thereon shall be completed. In the absence of the Chief Judge  
 6 of the SUPREME Court [of Appeals], the provisions of this section shall be applicable to  
 7 the senior judge present in the SUPREME Court [of Appeals]. The powers of the Chief  
 8 Judge set forth in this section shall be subject to any rule or regulation adopted by the  
 9 SUPREME Court [of Appeals].

10 22.

11 Where any Term is held, or trial conducted by less than the whole number of said  
 12 Circuit Judges, upon the decision or determination of any point, or question, by the  
 13 Court, it shall be competent to the party, against whom the ruling or decision is made,  
 14 upon motion, to have the point, or question reserved for the consideration of the three  
 15 Judges of the Circuit, who shall constitute a court in banc for such purpose; and the  
 16 motion for such reservation shall be entered of record, during the sitting, at which such  
 17 decision may be made; and the several Circuit Courts shall regulate, by rules, the mode  
 18 and manner of presenting such points, or questions to the Court in banc, and the decision  
 19 of the said Court in banc shall be the effective decision in the premises, and conclusive, as  
 20 against the party, at whose motion said points, or questions were reserved; but such  
 21 decision in banc shall not preclude the right of Appeal, or writ of error to the adverse  
 22 party, in those cases, civil or criminal, in which appeal, or writ of error to the SUPREME  
 23 Court [of Appeals] may be allowed by Law. The right of having questions reserved shall  
 24 not, however, apply to trials of Appeals from judgments of the District Court, nor to  
 25 criminal cases below the grade of felony, except when the punishment is confinement in  
 26 the Penitentiary; and this Section shall be subject to such provisions as may hereafter be  
 27 made by Law.

28 41E.

29 The Chief Judge of the SUPREME Court [of Appeals] shall designate one judge of  
 30 the District Court as Chief Judge of that Court, to serve as Chief Judge at his pleasure.  
 31 The Chief Judge of the District Court may assign administrative duties to other judges of  
 32 the District Court and shall perform such other duties in the administration of the  
 33 District Court as may be prescribed by rule or by law.

#### 34 **Article V - Attorney-General and State's Attorneys**

35 6.

36 It shall be the duty of the Clerk of the SUPREME Court [of Appeals] and the  
 37 Clerks of any intermediate courts of appeal, respectively, whenever a case shall be  
 38 brought into said Courts, in which the State is a party or has interest, immediately to  
 39 notify the Attorney General thereof.

#### 40 **Article XVII - Quadrennial Elections**

41 3.

42 All State and county officers elected by qualified voters (except judges of the Circuit  
 43 Courts, [judges of the Supreme Bench of Baltimore City,] judges of the SUPREME Court

8

1 [of Appeals] and judges of any intermediate courts of appeal) shall hold office for terms  
2 of four years, and until their successors shall qualify.

3 SECTION 2. AND BE IT FURTHER ENACTED, That the General Assembly  
4 determines that the amendment to the Constitution of Maryland proposed by this Act  
5 affects multiple jurisdictions and that the provisions of Article XIV, Section 1 of the  
6 Constitution concerning local approval of constitutional amendments do not apply.

7 SECTION 3. AND BE IT FURTHER ENACTED, That the amendments to the  
8 Constitution proposed by this Act take effect on January 1, 2000.

9 SECTION 4. AND BE IT FURTHER ENACTED, That the foregoing section  
10 proposed as an amendment to the Constitution of Maryland shall be submitted to the  
11 legal and qualified voters of this State at the next general election to be held in  
12 November, 1998 for their adoption or rejection in pursuance of directions contained in  
13 Article XIV of the Constitution of this State. At that general election, the vote on this  
14 proposed amendment to the Constitution shall be by ballot, and upon each ballot there  
15 shall be printed the words "For the Constitutional Amendments" and "Against the  
16 Constitutional Amendments," as now provided by law. Immediately after the election, all  
17 returns shall be made to the Governor of the vote for and against the proposed  
18 amendment, as directed by Article XIV of the Constitution, and further proceedings had  
19 in accordance with Article XIV.