

MAJ_FAV_SB415

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Maryland Association for Justice, Inc.

2020 Position Paper

WRITTEN COMMENTS SUPPORTING JUDGES -- ELECTION

Senate Judicial Proceedings Committee Bill Hearings 2/12/2020, 12:00 p.m.
SB 415, Circuit Court Judges – Election
SB 596, Judges - Selection, Election, Tenure, and Continuance in Office

House Judiciary Committee Bill Hearings 2/12/2020, 1:00 p.m.
HB 11, Judges - Election, Retention, and Mandatory Retirement Age
HB 518, Judges - Selection, Election, Tenure, and Continuance in Office

The Maryland Association for Justice (MAJ) supports the bills to change the current contested judicial election process to a retention election. Judges make life-affecting decisions every day in cases dealing with divorce, custody, criminal conduct, business disputes, personal injury, etc. Unlike other political offices that require majority votes, cooperation, and compromise and has further checks and balances (for example, Governor and Legislators), a circuit court judge acts alone deciding most matters in which someone wins and the opponent loses. The current judge selection system evaluates applicants by many bar associations, an independent nominating commission, the Governor's staff, and the Governor. The goal is to appoint a highly qualified and capable judge. Any lawyer can become a candidate for judge without any independent evaluation of that candidate's abilities to be a judge. A retention election acknowledges that the current selection process appoints qualified judges.

Ethical Considerations. Judge candidates are criticized for raising money from lawyers who appear in court before the judge-candidate prior to and after the election which can be perceived as a conflict of interest. This may lead to complaints that a judge favors or disfavors people because they did or did not contribute to the candidate's election. Another criticism is that the judge is expressly or impliedly asking people to contribute either directly or through representatives. Other non-judge candidates are not restricted in fundraising.

Attached is a brief summary of amounts raised by judicial election candidates (from reviewing the Maryland State Election Boards finance reports). For county-wide elections, over \$200,000 must be raised. In the Anne Arundel County 2010 judicial campaign, the challenger who prevailed in the election then held a **post-election party** to retire her debt even though she was going to be sworn in as a sitting judge. She raised about \$168,000 before the November 2 election and \$161,500 AFTER BEING ELECTED A JUDGE. The MJCCC found that there was no prohibition against post-election fundraising by the elected judge.

Judge Elections Differ From Any Other Election. All other election candidates choose to run, organize life and work to make campaigning time, and prepare financing and campaign infrastructure **before filing**. It is impossible for an appointed judge to take these steps. The appointed judge never knows when the Governor will appoint or if he / she will be selected. When appointed, the new judge must close his / her law practice within 30 days and take the bench. After appointment, a new judge is learning this new full-time job and must go through judge orientation and classes. A new judge hears cases every day instead of campaigning leaving limited time or ability for campaign planning, fundraising, and campaigning.



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Discourages Quality Appointees. The current election process discourages successful lawyers from seeking judicial appointment. A lawyer abandons a successful law practice to face the chance of losing in a general or primary election.

Quality And Vetting Process. The judicial application process is a lengthy application and examination procedure that evaluates applicants for nomination to the Governor. An applicant generally submits to be interviewed by approximately 14 different law related interest groups such as the County Bar Association, Maryland State Bar Association, Women's Bar Association, etc. The interview process before nomination ends with the County judicial nominating commission. This rigorous interview process evaluates strengths and weaknesses and results in nominations to the Governor of three or more persons. The goal is to ensure that qualified lawyers become judges who administer the legal system and maintain its quality. Under the current Maryland Constitution, any lawyer who meets the criteria can file run in the election to defeat the appointed judge. The public seldom knows or understands the application or vetting process versus another candidate who may never had qualifications vetted.

Public Misunderstanding. Members of the public are unable to make a distinction between a Circuit Court judicial election and any other candidate on the ballot. This is the only election for 15 years as opposed to every other elected position for a four-year term. Any other elected official's performance is evaluated by the next general election but judges do not reappear for 15 years on the ballot, if ever. There are checks and balances between the Executive branch and Legislative branches of government. Judges have largely unlimited power to make decisions.

Confusion, NOT Non-Partisan. Judicial candidates run as a member of the "judicial" party as opposed to being designated as a Democrat or Republican. But in the real world, a question most often asked of judicial candidates is whether they are a Democrat or Republican. As an appointed judge, it might be considered unethical to identify yourself as one or the other. In contrast, however, a challenger is not restricted from identifying with either political party. The ballot described candidates as "judicial" party without no indication of who is a sitting, appointed judge that went through the vetting process. Notwithstanding the designation "judicial" party, the judicial election is PARTISAN and NOT non-partisan according to *Suessmann v. Lamone*, 383 Md. 697, 729, 862 A.2d 1, 19 (2004) ("... judicial elections for the circuit courts, ... remain, despite appellants assertions to the contrary, partisan affairs.").

Retention election makes sense. Changing the current contested election system to a retention election avoids almost all the above difficulties and problems. No substantial money would have to be raised. There would be no risk of a popular or name recognized candidate displacing an appointed judge who was vetted and selected. Challenger misconduct would be largely eliminated. Ethical considerations such as those discussed above would no longer exist since there would be limited fundraising or comments about other candidates. Public misunderstanding would be eliminated without a contested partisan judicial election. A change to a retention election would encourage a greater number of highly qualified lawyers to seek judicial appointment and abandon successful law practices since the chance of losing that appointment in a judicial election would substantially be eliminated.

RonJarashow_FAV_SB45

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February 12, 2020

WRITTEN COMMENTS SUPPORTING RETENTION ELECTION FOR JUDGES

Senate Judicial Proceedings Committee Bill Hearings 2/12/2020, 12:00 p.m.
SB 415, Circuit Court Judges – Election
SB 596, Judges - Selection, Election, Tenure, and Continuance in Office

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FROM: Ronald H. Jarashow, Former Anne Arundel County Circuit Court Judge

Background. I am a former Anne Arundel County Circuit Court Judge that lost my judicial appointment in the November 2010 election after being appointed in January 2010 by Gov. Martin O'Malley. I am personally familiar with the judicial election process, its burdens, difficulties, and ethical considerations as detailed below. I support changing the current contested election which is a **partisan** election by law – see the discussion below.

Judge Elections Not Like Any Other Election. At candidate forums, attendees want to hear from politicians – candidates for the General Assembly, Governor, County Executive, etc. Organizers seldom give judicial candidates time to speak. We are introduced and get to wave.

Judges Not Like Other Politicians. Circuit Court Judges are elected for 15 years unlike any other office on the ballot that is for a 4-year term. At the end of the 4-year term, voters evaluate whether to keep the elected official in office. That does not happen for judges. Seldom do judges appear on the ballot again.

County-Wide Election. A judge must run county-wide, not in a limited district. As a judge candidate, it is hard to raise sufficient money to conduct a campaign and inform all citizens about the selection process and qualifications versus a non-judge candidate.

Voters Do Not Know Judicial Candidates. In my 2010 election, there were 202,000 votes cast for Governor. In the down-ballot judicial election, it appears there were slightly more than 100,000 votes cast. I lost my judge appointment by 7% of the votes cast to a candidate who was supported by a political party. She reportedly never tried a case in court before.

Voter Confusion. Judges run on the “Judicial” party. But most often, I was asked whether I was a Democrat or Republican. As a sitting judge who is supposed to be impartial, I thought it was improper to declare I was in one party or the other. Yet a non-judge judicial candidate is not restricted in declaring affiliation with a political party. Further confusion occurs because Orphans Court Judges who are elected for 4 years also appear on the ballot with a party affiliation.

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FROM: Ronald H. Jarashow, Former Anne Arundel County Circuit Court Judge

Lawsuits By Judicial Candidates. Some judicial candidates file lawsuits against judicial election candidates or volunteers. *See, e.g., Rickey Nelson Jones v. Mary E. Barbera*, No. 1415, 2020 Md. App. LEXIS 65, at *1 (App. Jan. 24, 2020) (unreported) (the unsuccessful judicial candidate sued the Court of Appeals Chief Judge); *Claudia A. Barber vs. Ronald Jarashow*, D.C. Superior Court, case no. 2019 CA 006763 B (I was sued by the unsuccessful judicial candidate in the 2016 judicial election; the case is pending).

Personal Financial Burden. In several elections, appointed judicial candidates must contribute substantial amounts to finance the campaign for the county-wide election. One former Circuit Court Judge told me that she contributed approximately \$90,000 of her own money to her judicial campaign. I contributed a significant amount in 2010 to my judicial campaign.

Candidate Misconduct Has No Penalty. Judicial elections are overseen by a volunteer committee known as the Maryland Judicial Campaign Conduct Committee (MJCCC). This group has no authority to punish misconduct by a judicial candidate. They regularly accept complaints, analyze accusations of misconduct, and issue sanction reports. For example, the 2010 Anne Arundel County challenger was found to have violated judicial campaign rules by distributing misleading campaign literature on election day that mischaracterized her as being an appointed judge along with my co-appointee to the bench. That literature used our black and yellow campaign colors (instead of her campaign colors of blue and white) with her photograph and my running mate that made it appear as if they were the two appointed judges. The law imposes no penalties for misleading judicial campaign conduct. Attached is part of the 75-page MJCCC finding that the 2010 A.A. County challenger violated campaign standards.

ROnJarashow2_FAV_SB415

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Ron Jarashow & Laura Kiessling

CIRCUIT COURT JUDGES

RESPECTED AND ENDORSED BY

POLICE • FIREFIGHTERS • DEPUTY SHERIFFS • TEACHERS
 MARYLAND STATE BAR ASSOCIATION
 MEMBERS OF THE JUDICIAL NOMINATING COMMISSIONS OF BOTH GOVERNORS
 EHRlich AND O'MALLEY
 ADVOCATES FOR VICTIMS RIGHTS • CITIZENS FOR JESSICA'S LAW

LEARN MORE: Visit us at www.AnneArundelJudges.com or on Facebook at Anne Arundel Judges State



Alison Asti for Circuit Court Judge

The Maryland Constitution provides that our judges should be lawyers who are "most distinguished for integrity, wisdom and sound legal knowledge." I believe that I am the candidate who best meets those requirements.

I am a lifelong resident of the County, a former President of the Maryland State Bar Association, a board member of the Maryland School of Law, and the past General Counsel of the Maryland Stadium Authority. I am most proud of my role in relocating the NFL Ravens to Baltimore and building Camden Yards and Ravens Stadium.

I have been recognized by Leadership in Law, Maryland Super Lawyers and Maryland's Top 100 Women. I have also been President of many state, local and national legal organizations.

I believe that the citizens of Anne Arundel County deserve to have judges they select – not judges who were selected by Martin O'Malley as a result of a compromised partisan process.

— Alison Asti



Independent • Qualified • Experienced



Ron Jarashow

- 35 year career attorney with real courtroom experience
- In 2009, selected as one of the best courtroom and business lawyers in Anne Arundel County
- Represented police, victims, community groups, individuals and small businesses
- Volunteered for children through coaching and the Optimist Club, which supports a home that protects battered women and children, and other youth programs
- Wife, Nani, and he raised three sons in Anne Arundel County



Laura Kiessling

- Two decades as a tough prosecutor in our County
- Promoted to become first female Deputy State Attorney in Anne Arundel County
- Prosecuted child predators, rapists, and murderers
- Volunteered for children through organizations such as Annapolis and Anne Arundel County Boys and Girls Club and Cal Ripken Sr. Foundation
- Husband, Trevor, and she are raising their two children in Anne Arundel County

OUR JUDGES • HONEST • FAIR • IMPARTIAL



The Most Qualified Judge Candidates

SAMPLE BALLOT
 NOVEMBER 2, 2010
 STATE OF MARYLAND, ANNE ARUNDEL COUNTY

JUDGE OF THE CIRCUIT COURT JUDICIAL CIRCUIT 5 Vote for No More Than Two	
<input checked="" type="checkbox"/>	Alison Asti
<input type="checkbox"/>	
<input checked="" type="checkbox"/>	Laura S. Kiessling



Laura Kiessling

RonJarashow3_FAV_SB415

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Summary of Selected Judicial Elections					
From Review of Selected Judicial Campaign reports					
By Ron Jarashow review of campaign reports					
<u>Amount raised</u>	<u>Yr Election</u>	<u>Judicial Candidate</u>	<u>Amount Contrib by Candidate</u>	<u>County</u>	<u>NOTES</u>
\$168,334	2018	Mark Crooks	\$27,000	AA	Only through Primary.
\$200,898	2010	Jarashow / Kiessling		AA	
\$260,677	2016	Vitale, Schaeffer, Klavans, McCormack		AA	
\$261,780	2008	Baltimore City Slate		Balt. City	
\$159,082	2014	Baltimore City Slate		Balt. City	
\$372,370	2016	Baltimore City Slate		Balt. City	
\$167,985	2010	Alison Asti	\$121,000	AA	BEFORE NOV 2 vote
\$161,463	2010	Alison Asti		AA	AFTER NOV 2 vote

PaulGoetzke_UNF_SB415

Uploaded by: GOETZKE, PAUL

Position: UNF

Hon. Paul G. Goetzke (ret.)

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February 12, 2020

SB 415 (Judicial Elections)

Hearing Date: 2/12/20

Position: Opposed

Chairman Smith and Members of the Senate Judicial Proceedings Committee:

SB 415 proposes a constitutional amendment terminating voters' right to elect Circuit Court judges. Instead, governors will appoint the judges with the advice and consent of the Senate, and the appointed judge's name will appear on the next ballot, *alone and without opposition*. Marylanders will be allowed to vote only on whether the appointed judge will retain the office.

No judge appointed to the State's no-election courts (D.Ct., CSA, CofA) has ever lost a retention vote, and none ever will. Votes against retention average only 12.7%.¹ Circuit Court judges (now, 153) will become political appointees.

Proponents don't identify the problem caused by Court elections, or how terminating elections will fix the unidentified problem. However, please consider:

- **Marylanders adopted Circuit Court elections in 1851 as a guard against politically motivated judicial appointments.²**
- **For 170 years, voters have chosen Circuit Court judges in an open, public, and transparent process.**
- **The proposed amendment will result in appointments made behind closed doors, based on familial relationships, friendships, lobbying, and purely political considerations.³**

¹ See Kuperman, 46 UBLF Art. 3.

² *Id.*

³ The late Gov. Mandel said he created judicial nominating commissions to stop a PG County Senator from insisting on appointments of his friends to the no-election District Court in exchange for his votes supporting construction of the Capital Centre.

- For example, appointments to the *no-election courts* include fundraisers' family members, a Baltimore Mayor's wife, a former Congressman, and Sen. Mike Miller's son.
- The public (esp. litigants and lawyers) will lose confidence in the courts if Circuit Court appointments are based on politics, friendships, familial relationships, lobbying, and purely political considerations instead of merit.
- Governors win elections based on political promises (e.g., tough-on-crime). Lawyers and litigants may believe that the judge assigned to their case was appointed to fulfill those promises. That will undermine confidence in the impartiality of Circuit Court judges.
- African-Americans have relied upon Circuit Court elections when governors appointed only white applicants to the bench.
- This amendment will disenfranchise Marylanders including African-Americans, other minorities, women, the constituents of this Committee, and the members themselves.
- The MSBA assert that "contested judicial elections are confusing to the public". It may be assumed, however, that Maryland voters understand a right they have exercised for 170 years.
- Sitting Judges are now free to campaign with few limitations. They may: make statements of personal views on legal, political, and other issues not likely to come before the court; attend and purchase tickets for events sponsored by political organizations; seek and use endorsements; respond to attacks on their record; and use social media to request financial support, speak, and write on behalf of their candidacy.

It is respectfully requested that this Committee preserve Marylanders' constitutional right to vote for their Circuit Court judges by rejecting SB 415.

Sincerely,



Hon. Paul G. Goetzke (retired)