

TESTIMONY BEFORE THE MARYLAND SENATE JUDICIAL
PROCEEDINGS COMMITTEE

WEDNESDAY, FEBRUARY 20, 2019 AT 12 PM

SENATE BILL 596 – CIRCUIT COURT JUDICIAL ELECTIONS

Presented by Claudia Barber, 2016 and 2018 candidate for judge on Circuit Court
for Anne Arundel County

Today, our state legislature seeks to replace the state circuit courts' current open judicial election process to a more limited judicial retention-only election process where voters would be asked to accept or reject the retention of judges nominated and appointed by a small judicial nominating committee and governor. This small committee consists of citizens chosen by a sitting governor based on partisan politics, which results in judicial appointments based on the same partisan politics rather than which judicial candidate would be the most skilled jurist and understands societal ills, which impact persons of color appearing regularly before the judiciary. There are people in Maryland, who were wrongly incarcerated for years, and prosecutors rarely held accountable for these missteps.

In essence, the impact of partisan politics on the composition of the judiciary cannot be underestimated. It has resulted in an effective glass ceiling for minorities interested in serving on the circuit court, leaving the election process as the only viable option to become a circuit court judge in this state. When Governor Marvin Mandel created his executive order decades ago establishing these judicial nominating commissions, someone recognized it would be an imperfect process. It is. The fact that there have only been three African Americans, no Hispanic Americans, no Native Americans, and no Asian Americans in the 300 plus year history of Anne Arundel County Circuit Court exemplifies the insidious glass ceiling created by the judicial nominating committee process. To remove the only hope that most minority candidates have to being elected to the judiciary is to ensure, particularly in those counties where minorities are underrepresented, that the judiciary in Maryland will remain monochromatic. My running in a contested judicial election in 2016 was the only reason there was a sudden interest to diversify the bench in 2018.

I ask that this legislature reevaluate Senate Bill 596, as it further removes voter impact to effect change and to diversify the judiciary throughout the state of Maryland. Voters are in a better position to decide on who should be their trial court judges, more so than a non-elected commission chosen based on partisan relationships. Given the increase in racially charged incidents in this state and the existing composition (one African American female, the first appointed in 2018, in the 368 year history) of Anne Arundel County's Circuit Court, we need inclusion and diversity on every court in every county of this state. A Goucher Poll released February 18, 2019, indicates 10 percent of African Americans polled believe the criminal justice system in Maryland treats whites and blacks equally. There is no legitimate reason why the Anne Arundel County Circuit Court still does not reflect the community it serves. The only explanation is that the judicial nominating committee through partisan politics has stacked the deck against minority judicial candidates. Therefore, limiting the electoral process to retention of only those appointed through the judicial nominating committee process is in essence institutionalizing partisan and racist policy and practices.

Our research has revealed that the members of the Anne Arundel County Judicial Nominating Commission are not trained experts in how to measure competency of applicants. They are not required to take the highly regarded Implicit Association Test, which measures implicit biases of individuals. According to the International Public Sector Management Association, competencies are truly evaluated when focusing on the knowledge, skills, abilities, personal characteristics, and other people-based attributes that help distinguish superior applicants.

Based on feedback from members of the Anne Arundel County Judicial Nominating Commission, their deliberations are secret, but reasons given for maintaining an all white judiciary are because members pick and choose to short list candidates for reasons that have nothing to do with the written qualifications for being a judge. For example, some Commission members were short-listing candidates based on the fact that they had a legitimate law firm in Anne Arundel County. When their desired candidate had no legitimate law firm, the judicial

nominating committee found another reason to qualify their candidate. Meanwhile, when an African American male U.S. Naval Academy candidate, with a strong litigation practice in Anne Arundel County applied a few years ago, his stellar credentials were ignored. This is a perfect example of white privilege and how the judicial nominating process is manipulated to ensure that the judiciary in Anne Arundel County remains majority white.

The collateral damage behind maintaining an all white judiciary in this county is creating an all white magistrate judge panel and white-only court auditors. No equal opportunity employment exists in the magistrate judge selection process, and there is no legal process in place to protest these appointments. This failure to diversify the magistrate judge judiciary in this county is another example of state sponsored discrimination from the governor down to the judges sitting on the circuit court bench. These are ghosts of Jim Crow and a modern day version of an Emmett Till courthouse.

Passing HB 11 would not eliminate or reduce this state sponsored discrimination, but it would exacerbate this racist legacy. The majority of Anne Arundel County Judicial Nominating Commission members during their respective tenures appear, based on statistics, to be concerned about only nominating one or no people of color. **Since 2018, the appointment of Judge Elizabeth Morris, they continued doing so without any concern about those disenfranchised by this process.** They did so in 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, and 2019. There is no accountability or oversight of these judicial nominating commissions. If they choose to practice exclusion, they can and continue to do so.

The Maryland legislature must provide a procedural and legal process for those unfairly excluded from the judicial nominating process or denied positions for which they are qualified. An almost all white judiciary taints the entire justice system, and should not exist anywhere, let alone in the state's capital,, with its history of wrongly incarcerating citizens.

Thank you Senate Judicial Proceedings Committee members, and Mr. Chairman for
your time