

March 4, 2020

Testimony on SB 703
Circuit Court Judges - Selection and Tenure
Judicial Proceedings

Position: Favorable with Amendment

Common Cause Maryland supports SB 703, which would alter the selection of circuit court judges by requiring that Circuit court judges must be selected by gubernatorial appointment and subject to confirmation by the Senate. The continuance in office of a circuit court judge who is confirmed by the Senate by a vote of less than 80% of all members is subject to approval or rejection via a contested election at the next general election following the expiration of one year from the date the judge took office.

Circuit court judges face a different process than other judges in the state. Because any eligible candidates may challenge the incumbent judges by filing as a candidate, judges at the circuit court level are the only judges in the State who may face a contested election in order to retain their appointment. It is also only at the circuit court level where an individual may become a judge without a gubernatorial appointment and without being screened and recommended by a judicial nominating commission.

The issue is that Circuit Court judgeships in Maryland can have candidates. Just like in other elections, candidates have to run campaigns and campaigns are subject to external influence. The election of judges has become a major issue nationwide. Numerous states in the nation are sure to utilize a merit system for judge selection so that judges can be screened for experience, intellect, and judicial temperament. This is because states around the country have analyzed how the changing nature of elections are impacting judicial elections and the merits of the current system. Research has increasingly found that judicial elections are mirroring any other election – with big money from special interests playing an increasing role. Research by national experts including the Brennan Center for Justice, the National Institute on Money in State Politics, and Justice at Stake has found that “the boundaries that keep money and political pressure from interfering with the rule of law have become increasingly blurred.”

While we support this legislation, there are some reforms that could make it even stronger. We encourage the committee to consider amendments, including:

- The legislation should establish and require the advice of a nominating committee to vet potential candidates. The nominating committee must itself be diverse.
- The nominating committee and Governor must be charged to find candidates that reflect the demographic and political diversity of the jurisdiction.

Currently, Maryland circuit judges are put in a bind when they are required to run a campaign. Under these circumstances, judges are motivated to raise contributions and seek the approval of voters. Therefore, interest groups could occasionally influence judges and cause them to weigh decisions on a political balance. This set up is not conducive to a just and objective legal system. SB 703 is a good bill that will keep special interest and external influence out of our justice system. As such, we urge a favorable report.