

**MAJ\_FAV\_SB703**

Uploaded by: Jarashow, Ronald

Position: FAV



# Maryland Association for Justice, Inc.

## 2020 Position Paper

March 4, 2020

### WRITTEN COMMENTS SUPPORTING JUDGES -- ELECTION

Judicial Proceedings Committee Hearing 3/4/2020, 12:00 p.m.

#### **SB 703, Circuit Court Judges - Selection and Tenure**

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.

**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.



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## 2020 Position Paper

**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.

# **RJarashow\_FAV\_SB703**

Uploaded by: Jarashow, Ronald

Position: FAV

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March 4, 2020

WRITTEN COMMENTS SUPPORTING RETENTION ELECTION FOR JUDGES

Judicial Proceedings Committee Hearing 3/4/2020, 12:00 p.m.

SB 703, Circuit Court Judges - Selection and Tenure

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.

Judicial Proceedings Committee Hearing 3/4/2020, 12:00 p.m.

SB 703, Circuit Court Judges - Selection and Tenure

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.

## **RJarashow\_FAV\_SB703 - pt2**

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Position: FAV

**Ron**  
**Jarashow & Laura**  
**Kiessling**

**CIRCUIT COURT JUDGES**

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 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](http://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	



# **Rjarashow\_FAV\_SB703-pt3**

Uploaded by: Jarashow, Ronald

Position: FAV

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

**Beidle\_FAV\_SB703**

Uploaded by: Senator Beidle, Senator Beidle

Position: FAV

PAMELA G. BEIDLE  
*Legislative District 32*  
Anne Arundel County

Finance Committee

*Vice Chair*

Executive Nominations Committee



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THE SENATE OF MARYLAND  
ANNAPOLIS, MARYLAND 21401

March 4, 2020

**SB703**  
**Circuit Court Judges – Selection and Tenure**

Chairman Smith, Vice Chair Waldstreicher, and Members of Judicial Proceedings Committee:

Thank you for the opportunity to discuss Senate Bill 703, Circuit Court Judges – Selection and Tenure.

SB 703 changes the appointment process for Circuit Court Judges. It requires the judicial applicant to be vetted by the nominating commission, appointed by the Governor and approved by the Executive Nomination Committee and receive 80% of the full Senate vote, if they fail to receive 80% of the Senate vote they will stand for a competitive election, just as they do now. This gives the Senators every opportunity to be certain that the appointed judges are competent and represent diversity in gender, ethnicity, and experience.

Why do we need this bill? The playing field is not level. Currently Circuit Judges face a very different selection process than other judges in the State. After they are appointed, and give up their jobs, they must run in a contested election; frequently facing an un-vetted candidate. Their opposition pays \$25 to file, may have a better alphabetical ballot position, can raise money and campaign, making claims of how they will decide cases before the court. The sitting judge is at a true disadvantage, they cannot discuss their positions, are dependent on others to fund raise for them and most donations are from practicing attorneys appearing before them.

We must take action to remedy this procedure. I believe that SB 703 accomplishes this. It is a true compromise between the current procedure and a retention election that has failed to pass the General Assembly for at least 10 years.

I respectfully request a favorable report for SB703.

# **JoanneAntoine\_FWA\_HB0703**

Uploaded by: Antoine, Joanne

Position: FWA

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.

**LWVMD\_UNF\_SB703**

Uploaded by: Hybl, Lois

Position: UNF



**TESTIMONY TO THE SENATE JUDICIAL PROCEEDINGS COMMITTEE**

**SB 703 Circuit Court Judges - Selection and Tenure**

**POSITION: Oppose**

**BY: Lois Hybl and Richard Willson, Co-Presidents**

**DATE: March 4, 2020**

The League of Women Voters applauds the stated intent of this proposed constitutional amendment to increase diversity on the court and agrees that any nominating commission that advises the Governor on appointments to the court should reflect the demographic diversity of the jurisdiction where it serves.

However, the League has, since 1964, opposed requiring judges to face self-selected candidates in contested elections. This constitutional amendment requires new appointees to the circuit court, who are approved by a majority of the Senate but with less than a super majority of 80 percent, to compete in elections at the general election one year after appointment. The new judges are forced into an election requiring campaign appearances and requests for funding, often from attorneys who will be appearing before them in court.

An appointed circuit judge has been recommended by a judicial nominating commission and approved by a majority of the Senate. A self-selected challenger, in contrast, has undergone no such vetting, and the voters have little information about a challenger's qualifications or judicial temperament. Judges appointed to courts other than the circuit court are not required to face contested elections.

We urge an unfavorable report on SB 703.



# **MDJudiciary\_UNF\_SB703**

Uploaded by: Jones, Tyler

Position: UNF

**MARYLAND JUDICIAL CONFERENCE**  
**GOVERNMENT RELATIONS AND PUBLIC AFFAIRS**

Hon. Mary Ellen Barbera  
Chief Judge

187 Harry S. Truman Parkway  
Annapolis, MD 21401

**MEMORANDUM**

**TO:** Senate Judicial Proceedings Committee  
**FROM:** Legislative Committee  
Suzanne D. Pelz, Esq.  
410-260-1523  
**RE:** Senate Bill 703  
Circuit Court Judges – Selection and Tenure  
**DATE:** February 26, 2020  
(3/4)  
**POSITION:** Oppose

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The Maryland Judiciary opposes Senate Bill 703. This bill proposes an amendment to the Maryland Constitution relating to the selection and tenure of circuit court judges.

First, this bill provides that a candidate for circuit court does not have to run for election, either in a contested or retention election, should he or she receive confirmation by 80% of the Senate. The Judiciary has supported and continues to support efforts to make the process by which judges are appointed to the bench less political. The proposed legislation, however, transfers some of the governor's appointment power to the legislature, which could have a more politicizing effect on judicial appointments.

Everyone has the right to a fair, independent and impartial judiciary that reflects the community in which they live and in which those judges serve. Everyone has a right to appear before a judge free from political influence or social pressure. The rule of law should be everyone's focus not politics. This bill, however, rather than remove politics from the equation, makes it the primary avenue for a judge to attain or retain his or her seat. Abstention or a negative vote by merely ten senators would force a contested election. Thus, a small group could require any or all of a governor's appointees to face contested races.

Judges are not and should not act like politicians. Under this bill, judges would be in the position of having to lobby the entire Maryland Senate. In 2019, 10 circuit court judges were appointed, from lists comprised of 66 candidates, 40 of whom were on the "short list" of most qualified candidates approved by various nominating commissions. The volume of candidates seeking to meet with individual senators to permit an informed vote on qualifications would be daunting.

Second, the Judiciary strongly supports eliminating contested judicial elections for circuit court judges under any circumstances. This bill still provides for a contested election

should a candidate not be confirmed by at least 80% of the Senate. In all Maryland's courts, the governor appoints judicial candidates who fill out a comprehensive application and are vetted through a nominating commission. Before they even reach their interview with the nominating commission, however, they are also vetted by their local bar associations and by specialty bar associations – 13 of them.

With contested elections, lawyers who run against sitting circuit court judges need only be a 30-year old, five-year resident in good standing with the bar. There is no vetting or requirement that they have ever stepped into a courtroom. In addition, the sitting judge is bound by a code of ethics and can only tell voters, for example, "I will be fair, I will work hard, I will be impartial." And, although the lawyer candidates who run against the sitting judges should follow the Maryland Attorneys' Rules of Professional Conduct, there are dozens of examples where they do not. These opposing candidates often say anything they want, for example, "I will be tough on crime, I will always give long sentences to offenders with guns, I will always put addicts in jail." This often happens without repercussions.

Under this legislation, a judge in a contested race would face an undue, additional burden. A challenger would be able to campaign on the basis that the sitting judge was not approved by the Senate, without ever facing comparable scrutiny.

One of the most offensive aspects of contested elections is the need for judges to engage in fundraising. Almost always, attorneys who appear before the judges are the ones who contribute to a judge's re-election campaign. This does not inspire the trust and confidence of the public. This bill will not eliminate the need for judges to engage in fundraising.

Finally, this bill will cause confusion for voters. Nonpartisan judicial elections are already not well understood. With this legislation, the possibility exists that candidates for multiple circuit court vacancies in the same year would be elected in different methods on the same ballot, with one or more requiring only a retention vote, and others facing a contested race.

The Judiciary supports retention elections for circuit court judges just as we currently have for our highest appellate courts. Judges can still be scrutinized, voters can still vote, and we preserve the dignity of the bench and nurture the fragile trust of the people.

cc. Hon. Pamela Beidle  
Judicial Council  
Legislative Committee  
Kelley O'Connor