

TESTIMONY BEFORE THE MARYLAND SENATE JUDICIAL
PROCEEDINGS COMMITTEE

WEDNESDAY, March 4, 2020 AT 12 PM

Senate Bill 703 – 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 process where voters would not have the same input as voters have now in the current open process.

I ask that this legislature reevaluate Senate Bill 703 because it does not guarantee diversity, which it should if we are going to close the open process. It further encourages judicial appointments based on how well one is connected to the establishment. And there is little voters can do to oust a bad choice in a judge.

There are many county circuit courts in the state that lack diversity. They include the Circuit Court for Anne Arundel County, which has no Hispanics, no Asian Americans, no native Americans on its bench. And the trial court judicial nominating commission continues to keep it that way by practicing exclusion when it short lists candidates for the governor to appoint.

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 House Bill 1402, 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.

I sharply disagree that today's courts have changed dramatically. In many counties such as Anne Arundel County, the composition of the judges on trial courts does not reflect the demographics of the community. And there is no excuse for that.

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 is in essence institutionalizing partisan and racist policy and practices.

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. These are ghosts of Jim Crow and a modern day version of an Emmett Till courthouse.

Passing SB 703 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 the 2018 appointment of Judge Elizabeth Morris to the Circuit Court for Anne Arundel County, the Anne Arundel County Judicial Nominating Commission continues to practice exclusion by short listing all white candidates to the judiciary in 2019. This same Commission will continue to do so in the future 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. That's why the open process is better than a closed process. If these trial court nominating commissions choose to practice exclusion, they can and will 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. This state has a history of wrongly incarcerating citizens. That history alone should stop legislators from rushing to change the existing open electoral process to a closed process.

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