



TO: Members of the Senate Judicial Proceedings Committee

FROM: Henry E. Dugan, Jr.
Past President, Maryland State Bar Association

DATE: March 4, 2020

SUBJECT: **Senate Bill 703 – Circuit Court Judges – Selection and Tenure**

POSITION: **Support with Amendments**

The Maryland State Bar Association (MSBA) supports Senate Bill 703 with amendments. **Senate Bill 703 would abolish Maryland's current contested election method of selecting circuit court judges.** The bill proposes an amendment to the Maryland Constitution to alter the method of selection and tenure of circuit court judges from a contested election process to a merit-based system of judicial selection. **The MSBA would suggest an amendments to SB 703 which would remove the 80% Senate confirmation threshold, eliminate contested judicial elections entirely, and replace those contested elections with retention elections.**

For over 30 years, the MSBA has opposed the contested election of Maryland's circuit court judges on ethical, political, campaign, judicial independence and monetary grounds. We believe that partisan, electoral politics should be removed from Maryland's judicial selection process. We fear that these elections inadvertently transform judges into politicians and push them into the fray of partisan politics. This contradicts judicial ethics, threatens the independence and impartiality of Maryland's Judiciary and erodes the public's trust and confidence in our legal system.

Historical support for the current contested election system has come from the minority bar associations and their members, many of whom are also MSBA members. The reasoning most often provided for this position is that contested judicial elections open doors for minorities to ascend to the bench. In actuality, the opposite has been the case. Over the past decade, of the 5 sitting judges who lost elections, 3 were African-American males, one was an African-American female, and one was a Caucasian male. All 5 of the lawyers

who successfully challenged the sitting judges were Caucasians, 4 male, one female.

Contested elections subject a sitting judge to partisan politics and force him or her to campaign and raise funds to retain a seat on the bench. Considerable expense accompanies contested elections, as sitting judges must raise money, advertise, make public appearances and actively campaign for votes. Campaigning costs sitting judges time which, given heavy court dockets, is at a premium. Campaigns also costs money and can compromise a judge's impartiality, by virtue of interacting with voters they meet on the campaign trail who express their desires as to how lawbreakers should be dealt with from the bench.

Additionally, contested elections pose ethical dilemmas for sitting judges. Judicial Canons prohibit sitting judges from directly soliciting campaign funds, although their non-judicial opponents do not operate under these restrictions. In addition, attorneys who appear before judges in their courtrooms may contribute to the campaign, creating the appearance of and casting shadows of impropriety. Overall, contested elections present the potential for conflicts of interest.

Many qualified attorneys are discouraged from seeking a judicial seat because of contested elections, narrowing the pool of judicial candidates. The expense associated with campaigning, the time investment and the possibility of losing one's seat to a contender are all major deterrents. Attorneys who accept an appointment to the bench also give up their clients or jobs.

Quite often, the public does not know which candidates are sitting judges and vote for circuit court judges on the basis of alphabetical order and party affiliation rather than judicial qualifications. Voting polls indicate that party labels and ballot positions are often more significant than judicial qualifications, an unfortunate basis on which to select circuit court judges.

Merit Selection of Judges

A merit-based judicial selection process places the most qualified judges on Maryland's bench. Sitting judges have successfully completed a rigorous interview, evaluation and selection process. Their



skills, judicial temperament and qualifications have been demonstrated to the Trial Court Judicial Nominating Commission. Many have also been evaluated by local, specialty and state bar associations. Challengers often have not been through this process, or have received negative ratings from the Nominating Commission. Voters, generally, are unaware of the judicial candidate vetting process.

Marylanders are indeed fortunate to have judges with the highest quality of character, integrity, judicial temperament and learning on Maryland's Circuit Courts. These sitting judges are well respected, and of the highest caliber; they have earned the confidence, respect and support of the public and the Bar. To preserve Maryland's tradition of judicial excellence, the **MSBA strongly supports the principles of merit selection of circuit court judges and urges a favorable Committee report on Senate Bill 703, with amendments which would remove the 80% Senate confirmation threshold, eliminate contested judicial elections entirely, and replace those contested elections with retention elections.**