



Maryland Association for Justice, Inc.

2020 Position Paper

February 26, 2020

WRITTEN COMMENTS SUPPORTING JUDGES -- ELECTION

House Judiciary Committee Bill Hearings 2/26/2020, 1:00 p.m.

HB 1038, Circuit Court Judges - Retention Election **HB 1402, 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.



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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.

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.