

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

Hon. Mary Ellen Barbera
Chief Judge

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: House Judiciary Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: House Bill 75
Election of Circuit Court Judges – Nonpartisan Elections
DATE: January 20, 2021
(2/24)
POSITION: Oppose

The Maryland Judiciary opposes House Bill 75. This bill provides that the election of circuit court judges shall be nonpartisan, nominated at the primary election, elected at the general election, and primarily describe how certain situations related to death, declination, and/or disqualification of a candidate and vote tabulations are to be handled.

The propriety of the election of judges to the circuit courts of Maryland has been vigorously debated since the 1850-51 Constitutional Convention. A primary goal has always been, to the extent possible, to separate the election of judiciary officials from influence by political organizations.

The concept of permitting judicial candidates to stand for election without a prior nomination or primary process was examined as part of the comprehensive review of judicial elections in 1996 by the Commission on the Future of Maryland Courts. The Commission, a bipartisan assembly composed of distinguished members from each branch of the Maryland government, ultimately recommended that circuit court judges should be appointed by the Governor from a list submitted by a judicial nominating commission, confirmed by the Senate, and thereafter subject to retention elections. The Commission explained:

[A]ll judges initially appointed by Governors are appointed from lists submitted by nominating commissions consisting of lawyers and laypersons. Those commissions receive detailed applications from persons seeking appointment. They receive recommendations from various bar associations and letters from other interested persons. They interview the applicants. From all of this material and their own perceptions from the interviews, they nominate the

persons they believe most qualified. Governors also receive the applications of the nominees, along with whatever other material may be sent. Governors usually interview the nominees before making a choice. The process involves a careful examination of the qualifications of all who seek the appointment and the elimination of those thought to be unqualified or less qualified.

That review, that screening, is entirely absent when a challenger is initially elected. *Commission on the Future of Maryland Courts, Final Report Presented to the Governor and General Assembly of Maryland, Annapolis, at 58 (1996).*

The Commission's primary concern when a candidate in a judicial election has been neither appointed nor nominated was that "[q]uality control at the very beginning is absent." *Id.* at 59.

Regarding House Bill 75, the Judiciary is concerned with the language which would remove non-appointed candidates for circuit court judge from the traditional nominating process—primary, petition, or write-in pursuant to Election Law Article § 5-701 *et seq.* Without any primary or nomination process, a would-be candidate need only file a certificate of candidacy to appear on a ballot for election to the circuit court. There would be no vetting process in place, for example, to safeguard that a candidate is a qualified member of the Maryland Bar. Moreover, the single hurdle between a would-be candidate and the appearance of their name on the official ballot would be the completion of Maryland State Board of Elections Certificate of Candidacy.

In addition, this bill provides that candidates equal in number to twice the number of offices to be filled, who receive the largest number of votes in the primary election shall be nominated candidates. This provision would guarantee a contested general election and would also lengthen the election process for judges as a majority of judicial elections are currently resolved in the primary election.

The Judiciary has supported and continues to support efforts to make the process by which judges are elected to the bench less political. House Bill 75, however, could leave the process without even the most rudimentary quality control, and open to potential exploitation.

cc: Hon. Lily Qi
Judicial Council
Legislative Committee
Kelley O'Connor