



Maryland Association for Justice, Inc.

2021 Position Paper

MAJ INFORMATIONAL POSITION – HB75 "Election Law – Circuit Court Judges - Nonpartisan Elections

HB75 would substantially change the method of electing circuit court judges. Creating a nonpartisan election so that registered Independent voters may cast ballots is a worthy idea. But this would not resolve the other shortcomings of the current election system. In fact, HB75 may compound the following issues.

The Independent voter would get a special ballot with only judges adding to the complexity for poll place workers. As a practical matter, we wonder if any Independent voter would go to the primary just to vote for judges. This bill would only change the current partisan nature of judge elections as stated in *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.”). Often, voters still want to know if a judge is a Democrat or Republican so confusion is not resolved.

Under HB75, twice the number of vacancies getting the highest primary votes can be nominated candidates in the November election. For example, if there are 5 appointed judges, then 10 candidates (or more if tied) can be on the November ballot. With so many, one has to question why have a primary election at all. There is no money saved by the candidates since the November election is likely to have almost as many people on the ballot as there were in the primary.

Also, 8-902(B)(2) says a candidate must be “certified” to be on the ballot, but there is no explanation of that certification process. Candidates still must raise money, campaign, and challengers would not be vetted.

Ethical Considerations. Judge candidates raise money from lawyers who appear before the judge-candidate which might be perceived as a conflict of interest or favoritism for contributors. Non-judge candidates have no direct ethical fundraising restraints. Attached is a summary of some amounts raised by judicial election candidates (from Maryland filed finance reports). \$200,000-\$400,000 must be raised.

Judge Elections Differ from Other Elections. 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 plan these steps.

Discourages Highly Qualified Applicants. The current process discourages successful lawyers from seeking appointment and abandoning practice because he or she may lose in the election.

Quality and Vetting Process. The judicial application includes a lengthy application, interviews by up to 14 different law related interest groups such as the County Bar Association, Maryland State Bar Association, Women’s Bar Association, etc. Interviews conclude with the County judicial nominating commission that nominates at least three applicants to the Governor. Any lawyer who files to run in the election does not go through this evaluation. Voters seldom know or understand the application or vetting process to select the appointed judge. On the ballot, there is no indication of who is an “incumbent” or sitting judge versus a challenger.

Voter Misunderstanding. Judge elections are a unique -- for 15-year terms. Other elected officials are reviewed and elected every 4 years. Yet, judge elections on the ballot look like and other offices. Where there are checks and balances between the Executive and Legislative government branches, judges have largely unlimited power to render decisions affecting people.

Retention Election Makes Sense as proposed in HB35/SB295 and HB447. See the MAJ position papers filed in support of these bills.

The MAJ submits this position for informational purposes.