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OPPOSITION TO HB 306 NONPARTISAN JUDICIAL ELECTIONS

FROM: Ronald H. Jarashow, Former Anne Arundel County Circuit Court Judge

Background. I am a former Anne Arundel County Circuit Court Judge that lost my judicial appointment by Gov. Martin O'Malley in the November 2010 election. I have worked on judicial elections frequently since 2010. I am personally familiar with judicial elections, the burdens, difficulties, and ethical considerations as detailed below.

OPPOSITION. HB306, "Election Law – Circuit Court Judges – Nonpartisan General Elections" does not resolve the major problems with judicial elections and makes judicial election problems worse.

Look at the HB306 proposed process. Presumably, judicial applicants still go through 1) application, 2) up to 15 interviews with Bar Association groups, 3) JNC interviews to recommend applicants to the Governor, 4) the Governor's staff investigations / vetting, 5) interview with the Governor, and 6) the Governor's appointment. Then the appointed judge and any lawyer with 5 years Maryland residency can be a candidate for judge. *See Md. Const. Art. IV, §2.* Under HB306, no candidates run in the primary election and *every candidate who files* is on the November election ballot as nonpartisan candidates.

HB306 does not change current law which lists all candidates as "judicial" instead of Republican or Democrat. The 2004 Court of Appeals decision, however, held that since judge candidates run in primary elections, it is a considered a partisan election. HB306 eliminates the primary and forces all candidates into the General election.

HB306 contains an odd provision that says if two candidates in the November election are tied, then the vacancy remains open and gets filled again by the Governor.

PROBLEMS WORSENERD, NOT SOLVED, BY HB306.

1. **Unlimited candidates.** Number of candidates will be unlimited without any primary election;
2. **Voter confusion.** With so many candidates, it is like the primary election with unlimited numbers of candidates;
3. **Disparity** in ability to campaign and win. The appointed judge works all day on the bench and at night preparing and learning to be a good judge and only can campaign nights and weekends while every other candidate can spend unlimited amounts of time campaigning;
4. **Financial and fundraising.** It takes up to \$300,000 or more to run county-wide. Special interests would more likely support a candidate who endorses their views resulting in elected judges becoming more biased;
5. **Special interest groups and political parties** become more important and influence voters more significantly by endorsing candidates loyal to that group worsening the partisan nature of the election;
6. **Discouraging quality applicants.** Accomplished lawyers who would make excellent jurists are not likely to abandon law practice for an election that is so contested;
7. **Ethical considerations.** Funding from lawyers, litigants, political parties, and special interest groups may accompany explicit or implied promises to favor those supporters as an elected judge in a wide-open election;
8. **Disregard for the vetting process.** Applicants who go through the judicial selection and appointment process are interviewed and recommended by up to 15 Bar Associations (listed on the application), the Judicial Nominating Commission, and the Governor's staff to select and appoint a judge. A lawyer who files for election quite often did not go through that process and has never been evaluated for aptitude, temperament, diversity, or any other criteria often deemed proper for a judge;
9. **Confusion between judge and other political candidates.** Few voters understand that a judge is elected for 15 years in contrast to every other office which permits voters to review the elected official ever 4 years; and
10. **Electing an unqualified person.** With no vetting process, there can be no expectation that the elected judge is qualified.

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Finances. Attached is a short study I did in 2020 showing how much money judicial slates raised. With pressures on every candidate to raise funds, the judicial candidates would be more likely to pledge loyalty to special interest groups and political parties making them more biased as an elected judge.

Candidate Forums. Organizers give politicians speaking time (e.g., General Assembly, Governor, County Executive, etc.). Judge candidates seldom are permitted to speak to attendees. I used to be told I could not make an oral presentation because “you are only running for judge.”

County-Wide Election. Judge candidates run county-wide. It is hard to inform all voters about the judge’s selection process and qualifications versus challengers.

Voters Do Not Know Judicial Candidates and Political Party Influence. In my 2010 election, 202,000 votes were cast for Governor and only about 100,000 votes were cast for Judge. I lost my appointment by about 7% to a candidate whose last name started high in the alphabet and was endorsed by a political party whose Governor candidate won 55% of the County vote. That candidate reportedly never tried a court case. The endorsing political party ignored endorsing the appointed judges because the Governor was from the opposite political party. Six years later, the other political party central committee refused to endorse an appointed judge who was registered with the opposing political party. Bad political influences affect judicial elections.

Voter Confusion; Nonpartisan. Judges are currently designated “Judicial” party. The public often asks if the judge-candidate is a Democrat or Republican. As a sitting judge, I was reluctant to answer. Non-judge judicial candidates are not restricted in declaring a party affiliation. In 2010, the challenger was heavily endorsed by a political party and the Governor candidate from that party. No distinction is made with Orphans Court Judges who have party affiliation and are elected for 4-years terms.

Lawsuits by Judicial Candidates. Some judicial candidates file lawsuits. *See, e.g., Rickey Nelson Jones v. Mary E. Barbera*, Jones v. Barbera, 2020 Md. App. LEXIS 65, 2020 WL 405452 (Md. Ct. Spec. App., Jan. 24, 2020, cert. denied 2019) (unreported) (the unsuccessful judicial candidate sued the Court of Appeals Chief Judge). Lawsuit threats were made during my 2010 election.

Candidate Misconduct Has No Penalty. Judicial elections are overseen by a volunteer committee known as the Maryland Judicial Campaign Conduct Committee (MJCCC). This group has no authority to punish misconduct by a judicial candidate. They regularly analyze misconduct complaints and issue “sanction” reports. In 2010, the Anne Arundel County challenger was found to have violated judicial campaign rules by distributing misleading campaign literature on election day that mischaracterized her as being an appointed judge along with my co-appointee to the bench. That literature used our black and yellow campaign colors (instead of her blue and white campaign colors) with her photograph and my running mate that made it appear as if they were the two appointed judges. See Exhibit A, attached. The law imposes no penalties for misleading judicial campaign conduct.

Judges Are Not Politicians. Appointed judges typically are not politicians with time and knowledge about running in an election. There have been recent instances of politicians defeating appointed judges.

CONCLUSION. Until the Maryland Constitution is changed removing judges from public elections, these issues will continue to taint judicial elections. There have been recent General Assembly proposals to create safeguards to insure that the Governor’s appointed judge is qualified. One of those would require Senate approval by a defined margin to exempt that judge from the election process.

I request an **UNFAVORABLE** Committee Report.