

Testimony of Jay Radov on SB864 - Faithless Electo

Uploaded by: Jay Radov

Position: FAV

TESTIMONY OF JAY RADOV IN SUPPORT OF SB 864 – FRIDAY FEB. 24, 2023

Good afternoon, Chair Feldman, Vice Chair Kagan, and Members of the Committee. My name is Jay Radov. I am a retired lawyer and insurance professional. I have testified before the Senate Finance Committee and the House Economic Matters Committee many times, but obviously this is my first time before this Committee. Today, I am testifying before you simply as a concerned citizen in support of the “faithless elector” provisions of SB 864.

Under Maryland’s current law, the consequences of one or more “faithless” electors in Maryland could be problematic. For example, suppose that after all 50 states and Washington, DC have certified their presidential election results, the number of electoral votes is 270 for Candidate A and 268 for Candidate B. Further assume that Maryland’s populace has made a decisive choice for Candidate A who has won states representing 270 electoral votes. Nevertheless, in that hypothetical case, even 1 “faithless” Candidate A Maryland elector would reduce the number of Candidate A’s electoral votes to 269, thus throwing the presidential election into the US House of Representatives.

And 2 “faithless” Candidate A Maryland electors who switched to Candidate B could change the result of the entire election from Candidate A to Candidate B. Should it be so easy for one or more “faithless” electors to potentially undo the will of approximately 75 million American voters?

You might say that such an outcome is highly unlikely. However, I would like to make 3 points:

First, in 2000, George W. Bush received 271 electoral votes. Thus, 2 “faithless” George W. Bush electors would have thrown the election into the House of Representatives.

Second, in 2016, there were 10 “faithless” electors. Only 3 of those 10 “faithless” votes were invalidated and replaced pursuant to the laws of the 14 states which have enacted legislation similar to that of SB 864.

Third, speaking as a retired insurance professional, think of it as insurance: you want to be protected just in case a highly unlikely or unthinkable event does actually occur.

For the above reasons, I urge a Favorable Report on SB 864.

Thank you!

SB0864-EEE_MACo_SUP.pdf

Uploaded by: Kevin Kinnally

Position: FAV



Senate Bill 864

Election Reform Act of 2023

MACo Position: **SUPPORT**

To: Education, Energy, and the Environment
Committee

Date: February 24, 2023

From: Kevin Kinnally

The Maryland Association of Counties (MACo) **SUPPORTS** SB 864. This omnibus bill provides necessary and timely policy changes to protect public servants charged with ensuring fair, open, and transparent elections by extending criminal penalties for threats against county election administrators. In addition, the bill aims to protect Maryland's election system from foreign interference, and generally clarifies processes and procedures for local boards of elections.

An essential function of Maryland's county governments is to fund and oversee federal, state, and local elections, which proved particularly challenging amidst the pandemic. In addition to delays with redistricting data, pandemic-driven supply shortages, and difficulties recruiting election judges, local boards of elections faced a barrage of disinformation which made their jobs more dangerous.

Maryland law protects local elected officials who perform their duties – making it a crime for residents to threaten, intimidate, or otherwise impede their public responsibilities. However, unlike some states, Maryland does not extend these protections to other non-elected officials who perform administrative or oversight roles but may suffer the same potentially dangerous feedback from angry residents.

SB 864 prohibits an individual from knowingly and willfully making a threat to take the life of, kidnap, or cause physical injury to a county election director. Under the bill, a person who violates the law is guilty of a misdemeanor and, on conviction, is subject to imprisonment not exceeding three years or a fine not exceeding \$2,500 or both.

According to a 2022 Brennan Center for Justice poll, election officials are under attack and leaving their jobs. More than half of the respondents expressed concerns about the safety of their colleagues. Nearly one in three knew at least one colleague who quit their job partly or entirely because of safety concerns, increased threats, or intimidation.

SB 864 extends reasonable and necessary protections for local election officials. Accordingly, MACo requests a **FAVORABLE** report on SB 864.

AG Letter Single Subject Rule.pdf

Uploaded by: Sen. Cheryl Kagan

Position: FAV

CHERYL C. KAGAN
Legislative District 17
Montgomery County

—
Vice Chair

Education, Energy, and
the Environment Committee



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—
Joint Audit and Evaluation Committee
Joint Committee on Federal Relations

THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

In case you were wondering whether SB864 might be in violation of the “Single-Subject Rule,” I have attached this MAY 4, 2022 from the office of the Attorney General.

BRIAN E. FROSH
ATTORNEY GENERAL

ELIZABETH E. HARRIS
CHIEF DEPUTY ATTORNEY GENERAL

CAROLYN A. QUATTROCKI
DEPUTY ATTORNEY GENERAL



THE ATTORNEY GENERAL OF MARYLAND
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ASSISTANT ATTORNEY GENERAL

JEREMY M. MCCOY
ASSISTANT ATTORNEY GENERAL

DAVID W. STAMPER
ASSISTANT ATTORNEY GENERAL

May 4, 2022

The Honorable Lawrence J. Hogan, Jr.
Governor of Maryland
State House
100 State Circle
Annapolis, Maryland 21401

RE: House Bill 441, "Baltimore City - Pretrial Release of Defendant - Notice"
House Bill 785, "Courts - Baltimore City Jobs Court Pilot Program and
Circuit Court Real Property Records Improvement Fund"
Senate Bill 586, "Criminal Procedure and Public Safety - Courts and
Criminal Justice in Baltimore City"

Dear Governor Hogan:

We have reviewed HB 441, HB 785, and SB 586 for constitutionality and legal sufficiency. In doing so, we have considered whether HB 785 or SB 586 violate Maryland Constitution Article III, § 29, which requires that each bill have a single subject. We have concluded that while one provision of HB 785 raises a single subject issue, it is not clearly unconstitutional.¹

Article III, § 29 of the Maryland Constitution provides, in relevant part, that "every Law enacted by the General Assembly shall embrace but one subject." This provision traditionally has been given a "liberal" reading so as not to interfere with or impede legislative action. *Maryland Classified Employees Ass'n Inc. ("MCEA") v. State*, 346 Md. 1, 13 (1997). As the Court of Appeals explained:

¹ In reviewing a bill passed by the General Assembly prior to its approval or veto by the Governor, we apply a "not clearly unconstitutional" standard. 93 *Opinions of the Attorney General* 154, 161, n. 12 (2008).

That liberal approach is intended to accommodate a significant range and degree of political compromise that necessarily attends the legislative process in a healthy, robust democracy. It has sufficient fluidity to accommodate, as well, the fact that many of the issues facing the General Assembly today are far more complex than those coming before it in earlier times and that the legislation needed to address the problems underlying those issues often must be multifaceted.

Id. at 14. *See also Delmarva Power v. Public Service Com'n*, 371 Md. 356, 368-369 (2002) (noting that this deferential approach recognizes the nature of the legislative process, the compromises necessary in this process, and the complexity of the issues which necessitates multifaceted legislation). At the same time, the Court's liberal approach to the one subject requirement was "never intended to render the Constitutional requirement meaningless" *Id.*

A bill meets the one subject requirement if its provisions are "germane" to the same subject matter. *Migdal v. State*, 358 Md. 308, 317 (2000); *Porten Sullivan Corp. v. State*, 318 Md. 387, 407 (1990). "Germane" means "in close relationship, appropriate, relative, [or] pertinent." *Id.* Two matters can be regarded as a single subject because of a direct connection between them or because they each have a direct connection to a broader common subject. For purposes of assessing how closely connected and interdependent the provisions of a bill may be, the "notions of connection and interdependence may vary with the scope of the legislation involved." *MCEA*, 346 Md. at 14 (quoting *Porten Sullivan*, 318 Md. at 407).

The three bills each have sections in common with at least one of the other bills. House Bill 441, as enacted, requires that the Department of Public Safety and Correctional Services notify the Baltimore Police Department if a criminal defendant is released prior to trial. This bill does not have a single subject issue, but is relevant to the analysis of the other bills.

Senate Bill 586, as introduced, was an identical companion bill to HB 441, and, as enacted, contains the same provisions with respect to reporting of pretrial releases in Baltimore City. SB 586 has also been amended to include provisions related to the creation of a Jobs Court Pilot Program in the District Court sitting in Baltimore City and funding for that program as well as a requirement that the Baltimore Police Department report to the Governor and the General Assembly regarding firearms destroyed, seized, or recovered by the Baltimore Police Department during the preceding calendar year. As amended, all

The Honorable Lawrence J. Hogan, Jr.
May 4, 2022
Page 3

of the provisions in SB 586 apply only to Baltimore City and relate, at least tangentially, to the control of crime in Baltimore City. The Jobs Court Pilot Program provisions in SB 586 are virtually identical to the original provisions in HB 785, which, for reasons discussed below, can be given effect despite the single subject issue raised by that bill. The final provision, however, is identical to SB 667, which never made it out of Judicial Proceedings. Nevertheless, all three provisions are related to courts, criminal proceedings, and reporting of related matters in Baltimore City. While each takes a separate and narrow approach, in light of the deferential standard we apply in bill review, we cannot say that SB 586 is clearly unconstitutional.

Finally, HB 785, as introduced, related only to the Jobs Court Pilot Program, but was amended in the Senate to authorize the Judiciary to transfer up to \$12 million of its fiscal year 2022 General Fund appropriation to the Circuit Court Real Property Records Improvement Fund established under § 13-602 of the Courts Article. The amendment was unanimously supported by the two Senate committees who voted on it, and the provision raised no concerns during the floor debates. As a result, even though there is a slight risk that a court reviewing this provision, if challenged, would declare it violates Article III, § 29 of the Maryland Constitution, it is very unlikely that the entire bill would be declared unconstitutional. The Court of Appeals has held that later added “foreign matter” can be severed from the bill and the original provision can be given effect. *Migdal*, 358 Md. at 323-324.

Sincerely,



Brian E. Frosh
Attorney General

BEF/SBB/kd

cc: The Honorable John C. Wobensmith
Keiffer J. Mitchell, Jr.
Victoria L. Gruber

SB864_ Baby Kitchen Sink Testimony 2.24.23 .pdf

Uploaded by: Sen. Cheryl Kagan

Position: FAV

CHERYL C. KAGAN
Legislative District 17
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Vice Chair
Education, Energy, and
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Joint Audit and Evaluation Committee

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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

SB864: Election Reform Act of 2023
Education, Energy, & the Environment Committee
Friday, February 24, 2023 1PM

Improvements to Maryland's election processes are necessary so that our residents can fully participate and ensure that those who run our elections can do so safely and efficiently.

[SB864](#), the Election Reform Act of 2023, features pragmatic solutions to some of the problems and inconsistencies I observed while monitoring election canvasses over the past several years. These solutions include:

- Expanding protections for election employees against threats, violence, and intimidation;
- Replacing "faithless electors;"
- Manufacturing equipment in the United States or disclosing its country of origin;
- Allowing unaffiliated voters to participate in nonpartisan Circuit Court judge elections;
- Defining what constitutes a "stray mark" and ensuring that a "stray mark" is not the sole basis for invalidating a ballot;
- Reducing usage of Internet-delivered ballots;
- Establishing a mail-in ballot delivery deadline; and
- Compiling data on the reasons that voters need provisional ballots.

These eight provisions will make needed changes to our elections systems.

I urge a favorable report on SB864.

FTP-MD_SB864test_022423.pdf

Uploaded by: Charlie Cooper

Position: FWA



Get Money Out – Maryland

Baltimore County Progressive Democrats Club

Baltimore Nonviolence Center

Be the Change Bmore

Caucus of African American Leaders of Anne Arundel

Chesapeake Climate Action Network

Common Cause Maryland

Don't Shop on Tuesdays

Do the Most Good

Indivisible Central Maryland

Indivisible Howard County

Indivisible Montgomery

Indivisible Worcester

J Walkers Action Group

League of Women Voters of Baltimore City

Maryland Peace Action

Maryland United for Peace and Justice

Matthew Henson Community Development Center

National Association of Social Workers - Maryland

Our Revolution Maryland

Progressive Maryland

Randallstown Branch NAACP

Represent Maryland

St. Ignatius Justice & Peace Committee

Southwest Baltimore County Democratic Club

WISE –Women Indivisible Strong Effective

February 24, 2023

Support with Amendment: SB 864 – Election Reform Act of 2023

Charlie Cooper, Convener

For the People – Maryland is a coalition of nonprofit advocacy and community organizations that stands for political equality. Every citizen should have equal access to the ballot as a voter or as a candidate. District lines should be fair to every voter, regardless of race, ethnicity, or party affiliation. The corruption of big money in politics must be eliminated, and the disproportionate influence of concentrated wealth reduced.

We enthusiastically support SB 864, the Election Reform Act of 2023, which protects against a number of risks to the integrity of our elections that have become more prominent in recent years.

We support nonpartisan election of judges because we believe that party labels do not help voters assess whether a candidate has the experience, sense of equity, and temperament to judge fairly among all parties before the court.

Setting standards for contractors who mail absentee ballots seems wise in light of recent problems that have occurred in some jurisdictions. I personally did not receive a requested mail-in ballot in timely fashion in 2020.

We strongly support limiting the number of people who can request an absentee ballot by Internet to those who really need to do so such as overseas voters and disabled people. We are worried that nefarious organizations can amass email addresses and other identity data on large numbers of Maryland voters and spuriously request thousands of downloaded absentee ballots. Such a scheme could interfere with the rights of real Maryland voters who want to vote by whatever method since ballots would have previously been issued in their names.

We do, however, question whether the broad exception at page 15, lines 8-9 should be narrowed or stricken. How will boards of election determine whether a voter “would be unable to vote if the voter could not receive an absentee ballot electronically”? We are concerned that this language cancels the very risk that paragraph (2) of section 9-306 seeks to limit.

The provision preventing a stray mark from disqualifying a ballot is consistent with our driving principle of equality of access to the ballot. There are organized forces seeking to disenfranchise certain communities, and those forces may selectively try to disqualify ballots in those communities. We support the language in the bill to acknowledge and count the intent of the voter.

The right of the people to determine who is elected president must be protected. The carefully-constructed provisions in this bill to hold presidential electors to a pledge to vote for the candidate who nominated them will help to prevent the kind of election mischief that could potentially deny the rights of voters and throw the nation into chaos.

We support the language to require the State Board of Elections to develop strategies to inform voters about mail-in balloting. The states that have implemented more reliance on mail-in balloting seem to have higher participation rates and lower costs. Similarly, we support a required study on the reasons that voters cast provisional ballots in an effort to reduce the confusion or misinformation that leads to that outcome.

We support the intent of provisions on foreign manufacture of system components and foreign ownership of businesses with contracts to provide election services; however, we worry about their efficacy. We wonder whether it is truly practicable to have systems manufactured in the U.S. The *New York Times*, quoting President Biden reports, “‘Today we barely produce 10 percent of the computer chips, despite being the leader in chip design and research,’ Mr. Biden said. ‘And we don’t have the ability to make the most advanced chips now — right now. But today, 75 percent of production takes place in East Asia.’” On the software side, how do we know whether code was written in the U.S. or by a subsidiary or contractor abroad?

Similarly, we worry about how to protect against firms being sold to foreign interests. On page 5, the definition of “foreign national,” does not include a U.S. corporation that is mostly owned by foreign individuals or persons. More importantly, with the current state of hyper-concentration of wealth across the globe and the rise of private equity ownership, any firm can be sold rather quickly and without advance notice. Even if the State Administrator becomes aware of a sale, how would she protect voters’ interests if the event occurs a few weeks before an election? Would it be feasible to cancel a contract as provided at the top of page 6?

We do not have easy answers to these questions, but we believe that the State might have an opportunity to protect itself by reducing its reliance on outside firms and bringing as much as possible of the software development and system operations inside State government. We therefore propose a study of the feasibility of reducing reliance on outside contractors. On page 18, line 34, would insert a new section 7 and renumber appropriately

SECTION 7. AND BE IT FURTHER ENACTED,

(A) THAT THE DEPARTMENT OF LEGISLATIVE SERVICES, IN CONSULTATION WITH THE STATE BOARD OF ELECTIONS AND THE DEPARTMENT OF BUDGET AND MANAGEMENT SHALL CONDUCT A STUDY OF THE FEASIBILITY OF PERFORMING ALL CRITICAL ELECTION INFRASTRUCTURE INFORMATION TECHNOLOGY SERVICES WITHIN STATE GOVERNMENT.

(B) THAT THE STUDY AND RECOMMENDATIONS SHALL BE PRESENTED TO THE SENATE EDUCATION, HEALTH AND ENVIRONMENTAL AFFAIRS COMMITTEE AND THE HOUSE WAYS AND MEANS COMMITTEE BY DECEMBER 31, 2023.

(C) THAT CRITICAL ELECTION INFRASTRUCTURE INFORMATION TECHNOLOGY SHALL COMPRISE ANY ELECTRONIC OR INFORMATION TECHNOLOGY SYSTEM, INCLUDING, AT A MINIMUM:

- (1) A VOTING SYSTEM;
- (2) AN ELECTION MANAGEMENT SYSTEM;
- (3) A VOTER REGISTRATION WEBSITE OR DATABASE;
- (4) AN ELECTRONIC POLLBOOK;
- (5) A SYSTEM FOR TABULATING OR REPORTING ELECTION RESULTS; AND
- (6) ANY OTHER INFORMATION SYSTEM THAT IS DETERMINED TO BE CENTRAL TO THE MANAGEMENT, SUPPORT OR ADMINISTRATION OF AN ELECTION.

(D) THE STUDY SHALL SEEK TO ANSWER AT LEAST THE FOLLOWING QUESTIONS:

(1) ARE THERE ANY DESIGNATED HIGH-SECURITY INFORMATION TECHNOLOGY SYSTEMS THAT ARE TOTALLY MANAGED AND MAINTAINED BY STATE-EMPLOYED PERMANENT PERSONNEL AND STATE-OWNED OR LEASED COMPUTERS, INCLUDING OFF-SITE BACKUP?

(2) DO OTHER DEPARTMENTS OF STATE GOVERNMENT, INCLUDING THE UNIVERSITY OF MARYLAND, HAVE SOFTWARE OR HARDWARE CAPACITY TO MANAGE A PROJECT WITH COMPARABLE COMPLEXITY TO CRITICAL ELECTION INFRASTRUCTURE, INCLUDING OFF-SITE BACKUP?

(3) IS THE STATE SALARY SCALE FOR INFORMATION TECHNOLOGY EMPLOYEES A BARRIER TO MANAGING CRITICAL ELECTION INFRASTRUCTURE WITHOUT THE USE OF OUTSIDE CONTRACTORS? IF SO, WHAT CREATIVE SOLUTIONS WOULD BE AVAILABLE TO ENABLE THE STATE TO HIRE THE NECESSARY PERMANENT EMPLOYEES?

(4) DOES THE STATE CURRENTLY HAVE ACCESS TO AND OWN THE SOFTWARE CODE THAT CONTRACTORS USE TO OPERATE CRITICAL ELECTION INFRASTRUCTURE?

(E) THE STUDY SHALL ISSUE A FINDING REGARDING THE FEASIBILITY OF MANAGING SOME OR ALL OF THE CRITICAL ELECTION INFORMATION TECHNOLOGY WITHIN STATE GOVERNMENT AND RECOMMEND A COURSE OF ACTION.

David Naimon Senate EEE Testimony on Senate Bill 8

Uploaded by: David Naimon

Position: FWA

My name is David Naimon and I'd like to thank you, Chair Brian Feldman and Vice Chair Cheryl Kagan, for the opportunity to testify today. As you know, I'm the Secretary (and Democratic Leader) of the Montgomery County Board of Elections but I'm testifying today only on my own behalf as an individual.

Senate Bill 864 addresses some very important issues for election officials, including the growing national prevalence of threats against election officials and the effect of the increase in web-delivered mail-in ballots on the ability of local Boards of Elections in Maryland to count those ballots. I'd like to thank Senator Kagan for being a leader on election law issues in general and on these specific issues in particular, and to suggest some amendments that I think would help to accomplish our shared goals.

1. The bill would make it a crime to threaten a county election director (p. 3, lines 11-12), but I urge you to make the law much broader, and protect not only elected officials and election directors but *all election officials*. I suggest making it a crime to threaten not only the election director, but also any state, county, or municipal employee who performs election duties, any election judge, any member or staff of the State or local Board of Elections, and anyone who assists us in canvassing the ballots. Addressing the safety of those involved in elections will help us recruit election workers, reduce anxiety, and promote democracy. Making it a crime to threaten all election workers is a good start to assuring that safety.
2. I don't understand the purpose of the language on p. 14, lines 6-15 – we in Montgomery County have never (to my knowledge) rejected a ballot for “a tear, a fold, a food spill, or an errant punctuation mark.” Those all would be reasons to duplicate the ballot, but I can't imagine that those are considered “identifying marks” that must be rejected. The language appears to allow us to accept ballots with initialed changes if they weren't for the purpose of identifying the ballot, which I appreciate but we can do that under current law.
3. I agree with the bill's premise that web-delivered ballots are difficult to vote, difficult to send to us, and difficult and time-consuming to count. We use a modern technology to send voters the ballot, an old technology to get the ballots returned, and an ancient technology to hand-duplicate them. However, as I said briefly to the Committee last week, I don't think it's fair to limit methods of voting for some voters and not others, and I don't think having Board of Elections staff prohibiting or limiting the use of web-delivered ballots is the answer.
 - a. If you don't require *proof* of the conditions listed in the bill, they may be largely meaningless, but if you *do* require proof, you'll be asking already overburdened election officials, who are not trained in medical matters, to determine if a disabled person “is unable to mark a ballot independently by hand,” if a voter is having a “medical emergency” or is hospitalized (the bill doesn't say how close to the election it would have to be, and such medical issues are frequently hard to predict), whether a “travel commitment” is “unforeseen” and “short-notice” (if I invite someone to travel with me tomorrow to a vacation in a warmer climate, that would appear to qualify), or whether a voter would be “unable to vote” if they couldn't get a web-delivered ballot.
 - b. Proving that someone “would be unable to vote” if they didn't get a web-delivered ballot would be difficult, given all of the ambiguities of the process (including the performance of the USPS and the sometimes two weeks it took for U.S. mail ballots to arrive after being requested).

- c. Another category of voters who may need web-delivered ballots are those whose ballots were returned by USPS to the Board of Elections with the yellow stickers indicating that the ballots were undeliverable – sometimes this is because the address was incorrect, or because some universities have unusual addresses for their dorms.
 - d. These limitations would be very difficult to police, would be a record-keeping nightmare (would we need to hold onto doctors’ notes about the voters’ need for a web-delivered ballot?) and could easily lead to the perception or the reality that some voters are treated better than others.
4. What would I do?
- a. I would require voters who request web-delivered ballots online to acknowledge each step they’d need to follow for these ballots before moving to the next step, and would also give them a chance to switch to U.S. mail ballots at every step. This could include that you need to:
 - i. Have access to a working printer with ample toner/ink and paper
 - ii. Make sure you have an envelope, and address it to the correct return address
 - iii. Make sure you include the oath in the envelope (and that curing this may not be possible because election officials may not open the envelopes in time)
 - iv. Make sure you have postage or access to a drop box
 - v. Know that your ballot will be hand-duplicated by a bipartisan team, and that will lengthen the time before final results are known.
 - b. We currently have 14,000 Montgomery County voters on the permanent mail-in ballot list to receive *web-delivered* ballots for *every* future election, and there are many more around the state. I’d suggest sending each of them an email, mailing, and/or text asking them some version of “Are you sure?” with some of the information I just mentioned.
5. The language on p. 15, lines 14-15 appears to ONLY allow a contractor to send ballots 47 or more days before an election. Sending out ballots is not a one-time activity, and I’d be concerned that the implication of this language might be that Board of Elections staff would need to send the ballots themselves if it’s 46 days or fewer. That would require much more resources than any of us have (our staff currently does the mailing during the last 3-4 days before the election, but it’s a stress even then).
- a. Also, current federal law requires ballots to be mailed to military and overseas voters by 45 days before the election, and those are typically the first ballots mailed. This provision seems to require the contractor to mail all of the ballots two days before the normal start date.
6. The bill on p. 18, lines 17-18 makes the assertion that “voting by mail is the most efficient absentee voting method.” I would argue that our drop box collections are more efficient than USPS collections, and that U.S. mail delivery of ballots is not the most efficient method if the voter waits more than two weeks (as many did in 2022) after they request it for the ballot to arrive. I’d suggest that this language (as well as the language on lines 19-20) be changed as I indicated above to provide strategies for educating voters on what’s involved in voting and counting web-delivered ballots, without declaring to voters what would be most efficient.
7. I totally agree with the goal of the language on p. 18, lines 29-30 calling for analysis of the reasons voters cast provisional ballots. I’d suggest deleting “from the electronic poll books” on line 29, as some of the data about provisional ballots would not be found in the pollbooks but would be available elsewhere.

Thank you for the opportunity to present these concerns to you, and I’d be happy to respond to any questions you may have.

sb864.pdf

Uploaded by: Matthew Pipkin

Position: UNF

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

Hon. Matthew J. Fader
Chief Justice

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: Senate Education, Energy, and the Environment Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 864
Election Reform Act of 2023
DATE: February 22, 2023
(2/24)
POSITION: Oppose

The Maryland Judiciary opposes Senate Bill 864. The offered legislation removes circuit court judges from filing for partisan elections and establishes procedures under Subtitle 9, Election of Circuit Court Judges.

The Judiciary continues to strongly support the elimination of contested judicial elections for circuit court judges. This bill fails to address all the problems with contested judicial elections. 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.

In addition, the Judiciary currently has a [Workgroup to Study Judicial Selection](#) that is conducting a thorough study of methods of election and retention for trial judges in Maryland with all pertinent stakeholders. The Judiciary respectfully requests that the legislature resist enacting any reform in the area of elections of judges until this Workgroup has been given time to issue their final and comprehensive recommendations.

cc: Hon. Cheryl Kagan
Judicial Council
Legislative Committee
Kelley O'Connor

SB0864 - MSBA Opposition Letter (2023.02.24).pdf

Uploaded by: Shaoli Katana

Position: UNF



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MEMORANDUM

To: Members of the Senate Education, Energy, and the Environment Committee

From: Maryland State Bar Association (MSBA)
Shaoli Katana, Esq., Advocacy Director

Subject: Senate Bill 864 - Election Reform Act of 2023

Date: February 24, 2023

Position: Oppose (Subtitle 9)

The Maryland State Bar Association (MSBA) respectfully opposes **SB864 - Election Reform Act of 2023**. SB864 prohibits a person from knowingly and willfully making a threat to take the life of, kidnap, or cause physical injury to a county election director; establishes requirements and prohibitions related to a contract with an election service provider; requires judges of the circuit courts to be elected on a nonpartisan basis; prohibits a stray mark, blemish, or writing from being the sole basis for invalidating a ballot under certain circumstances; etc.

The MSBA represents more attorneys and judges than any other organization across the State in all practice areas. MSBA serves as the voice of Maryland's legal profession. Through its Laws Committee and various practice-specific sections, MSBA monitors and takes positions on legislation of importance to the legal profession.

SB864 addresses a broad range of electoral reforms. The MSBA is limiting its opposition to *Subtitle 9 - Election of Circuit Court Judges*, as this area concerns the legal profession and judicial elections. The bill seeks to amend the current system of judicial elections for circuit court judges to a non-partisan process for both the primary and general election.

I. Contested Judicial Elections Threaten Judicial Independence and Integrity

The MSBA opposes contested judicial elections for circuit court judges generally because the process threatens the independence and integrity of the circuit court. MSBA has opposed contested judicial elections for over thirty years on ethical, political, campaign, and monetary grounds:

1. Many of the best-qualified candidates for the circuit court do not apply, because they must leave their practices with the risk of losing their judicial seat in a contested election.
2. The appearance of sitting judges accepting campaign donations from contributors, including those who have cases before them, undermines public trust in an independent judiciary.
3. The Code of Judicial Conduct prohibits a sitting judge from taking positions as to how he or she would decide certain cases. As a consequence, a key element of the contested election process—debating the issues—is removed and the judicial campaign process becomes an inherently unfair process, because a challenger to a sitting judge does not have to comply with these restrictions.
4. The contested election threatens the independence, integrity, and competence of the circuit court.

II. The Proposed Reform Does Not Improve the Current Process

Under the current system, the appointed judge and all challengers appear on both primary ballots for Republicans and Democrats. If any candidate receives the most votes in both parties' primary, then the campaigning can end because only that candidate's name will appear on the general election ballot. Under SB864, the procedure proposed on page 12, lines 15-17, states: *"The candidates, equal in number to twice the number of offices to be filled, who receive the largest number of total votes cast in the primary election shall be the nominated candidates."*

Assuming any challengers had filed to run in the primary, there will always be two candidates whose names will appear on the general elections ballot, and the campaign for the contested seat would have to continue through the date of the general election. This would not be an improvement over the current election system.

MSBA has concerns with the details of this legislation and respectfully requests an unfavorable report. MSBA welcomes an opportunity to discuss improvements and alternatives to contested elections with Committee members. For additional information, please feel free to contact Shaoli Katana at MSBA at shaoli@msba.org.