



MSBA Main Office
520 West Fayette Street
Baltimore, MD 21201
410-685-7878 | msba.org

Annapolis Office
200 Duke of Gloucester Street
Annapolis, MD 21401
410-269-6464 | msba.org

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.