

SB 195 Support (2023).pdf

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Position: FAV

WENDY A. CARTWRIGHT, ESQ.
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Bill No.: Senate Bill 195
Title: Orphans' Court Judges – Election
Committee: Judicial Proceedings
Hearing Date: February 9, 2023
Position: Recommend Favorable Committee Report

COMMENTS:

Chairman Smith and Members of the Committee:

We, the Judges of the Orphans' Court for Prince George's County, collectively in our individual capacities, offer this written testimony in support of Senate Bill 195.

The bill arises from one of the five recommendations of the 2021 Task Force to Study the Maryland Orphans' Courts, of which Judge Groves was a member. They are suggestions for possible improvements to the court. Recommendation No. 2 states that “[c]andidates for the judge of the Orphans' Court shall not specify a political party affiliation. . .”

According to the Annotated Code of Maryland, Election Article, § 5-203(b), a candidate for a judicial office is not required to state a party affiliation. It is unknown why candidates for the Orphans' Court, a judicial office, have not been included in that exception. This bill adds language to the statute to clearly specify that candidates for the Orphans' Court are excluded from the requirement of candidates having to state a party affiliation.

Party affiliation does not determine whether one candidate for Orphans' Court is better fit for the office than another. It has neither influence nor impact in its oversight of estate administration, opinions or rulings. It also adds further confusion to voters as to the purpose and reach of the Orphans' Court. This is an improvement to the Court long overdue.

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Therefore,

We urge a Favorable Committee Report for Senate Bill 195.

Respectfully submitted,

Wendy A. Cartwright, Esq.

Athena Malloy Groves, Esq.

Jason A. DeLoach, Esq.

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CHRIS WEST
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Judicial Proceedings Committee



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February 9th, 2023
Senate Judicial Proceedings Committee
The Honorable William C. Smith, Jr.
2 East Miller Senate Building
Annapolis, Maryland 21401

Re: Senate Bill – 195 - Orphans' Court Judges - Elections

Dear Chairman Smith and Members of the Committee,

In most jurisdictions, the Orphans' Court consists of three judges, who are elected every four years. Orphans' Court Judges are also the only judges in the state that participate in partisan elections.

Last year's Task Force to Study the Orphans' Courts recommended making the election of Orphans' Court Judges apolitical by allowing them to engage in non-partisan elections, which is what Senate Bill 195 will do.

The opinion of the Attorney General states:

“Currently, in my view, Maryland law does not require judges of the Orphans' Court to register their political party when running for office. *See* MD Code Ann. Elec. Law Section 5-203 (2014) (**stating that requirements for party affiliation do not apply for candidates for judicial office.**) But historically judges of the Orphans' Court have registered their party affiliation when running for office and according to counsel for the State Board of Elections, altering this historical practice would require a statutory change.”

Furthermore, the Maryland Constitution does not mention party affiliation so no Constitutional Amendment would be necessary to make this party affiliation change. Senate Bill 195 will facilitate making our judicial offices less political and more neutral

I appreciate the Committee's consideration of Senate Bill 195 and will be happy to answer any questions the Committee may have.

SB 195 testimony.pdf

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February 8, 2023

Maryland Senate- Judicial Proceedings Committee

Re: Testimony in Support of Senate Bill 195

Orphans' Court Judges - Election

Good Afternoon Chairman Smith and members of the Committee,

Thank you so much for allowing me to speak to you today about Senate Bill 195. As you may be aware, I am Juliet Fisher, a Judge of the Baltimore County Orphans' Court, which oversees the probate and administration of all estates in Baltimore County as well as handling guardianships of minors' property. I am here on behalf of myself and Judges Evans and Frank, both of whom support the passage of SB 195.

The Orphans' Court consists in almost every jurisdiction of three judges, who are elected every four years. Currently, the only judges in the entire state that participate in partisan elections are the judges of the Orphans' Court.

Last year a Task Force to Study the Orphans' Courts was created and one of the recommendations of the Task Force was to make the election of Orphans' Court Judges less political by allowing them to engage in non-partisan elections, which is exactly what this proposed Bill would do.

Previously, my court had sought this change in an effort to make this judicial office less political in, and therefore more in line with the Judiciary, and more specifically with the Circuit Court judges each of whom cross-files for both the Democratic and Republican nominations, we had sought the opinion of our then Attorney General.

I am going to read you an excerpt from that opinion pertaining to cross-filing:

“Currently, in my view, Maryland law does not require judges of the Orphans' Court to register their political party when running for office. *See* MD Code Ann. Elec. Law Section 5-203 (2014) (**stating that requirements for party affiliation do not apply for candidates for judicial office.**) But historically judges of the Orphans' Court have registered their party affiliation when running for office and according to counsel for the State Board of Elections, altering this historical practice would require a statutory change.”

It is exactly that change that we are seeking here today. Because the Maryland Constitution is silent on party affiliation, no Constitutional Amendment would be necessary to make this party affiliation change.

As we continue to attempt to make our judicial offices less political and more in line with the neutrality inherent and desired in the judiciary, we would seek your support of SB 195.

William Evans, Esq.

Juliet Fisher, Esq.

Arthur Frank, Esq.

SB 195 - MSBA Estate and Trust Section Council Wri

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To: Maryland Senate – Judicial Proceedings Committee

From: MSBA Estate & Trust Law Section

Date: February 9, 2023

Subject: SB 195 – Orphans’ Court Judges - Election

Position: Support

The Estate and Trust Law Section of the Maryland State Bar Association (MSBA) **supports Senate Bill 195 – Orphans’ Court Judges – Election.**

Description of Current Law

The Orphans’ Courts oversee the administration of probate estates and guardianship of minors. It has been the historic practice of judicial candidates for the Orphans’ Court – which may include lay individuals in certain jurisdictions – to list their party affiliation in order to qualify for the ballot. This interjects partisan politics into the election of Orphans’ Court judges and differs from the election of all other Maryland judges, who participate in non-partisan elections.

Maryland Code Ann., Elec. Law § 5-203 provides that “[t]he requirements for party affiliation specified under subsection (a) of this section do not apply to a candidate for (1) a judicial office” The Maryland Constitution is silent on party affiliation in the context of judicial elections. Yet, candidates for election to the Orphans’ Courts uniformly list their party affiliation in order to qualify for the ballot.

Problem Addressed by this Legislation:

Given the ever increasing political divide within in our state and country, it is more important now than ever before that the judiciary be perceived as, and remain, politically neutral. However, it is difficult for the public to see Orphans’ Court judges as neutral when they are designated as being aligned with a particular political party.



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How this Legislation Solves the Problem:

Senate Bill 195 resolves the issue of partisan elections of Orphans' Court judges by making clear that judicial candidates for the Orphans' Court are to register "without party designation or regard to party affiliation." The result will be an election of Orphans' Court judges based on their qualifications and suitability for the office and not party affiliation.

For the reasons stated above, the Estate and Trust Law Section of the MSBA **supports SB 195 and urges a favorable committee report. For further information, please contact:**

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TESTIMONY TO THE SENATE JUDICIAL PROCEEDINGS COMMITTEE

SB 195 – Orphans’ Court Judges – Election

POSITION: Favorable, With Amendment

BY: Nancy Soreng, President

Date: February 9, 2023

The League of Women Voters of Maryland has long supported the elimination of partisan election of judges of the Orphans’ Court. Although partisan advocacy is appropriate for policy-making positions such as the General Assembly and Governor, a nonpartisan approach is essential for a fair judicial process. In addition, the current process effectively disenfranchises the 20% of voters who are not affiliated with a party.

We urge the committee to consider an amendment to the provision relating to the primary election as we believe it may confuse voters. Under the bill, all candidates would appear on the nonpartisan primary ballot and the candidates receiving the most votes, equal in number to those to be elected, will be nominated to the general election ballot. This will create a situation in which the general election ballot will instruct voters to “Vote for not more than 3” where only three names will appear, meaning the voters will not really have a choice. If the incumbent judges are unopposed, voters also would experience confusion in both the primary and general elections. We understand that the intent was to make the election of Orphans’ Court Judges parallel to that for Circuit Court Judges, but doing so will frustrate voters, creating negative feelings about the election of Orphans’ Court judges.

The League believes the better method would be to specify that if the number of candidates is more than twice the number of offices to be filled, all candidates would appear on the nonpartisan section of the primary election ballot. The primary election would reduce the total number of candidates to appear on the general election to twice the number of offices to be filled. If the number of candidates were no more than twice the number to be elected, all candidates would automatically be placed on the general election ballot without the need for a primary election to narrow the choices for voters. This would parallel the practice for nonpartisan Board of Education candidates with which voters are already familiar.

We urge a favorable report on SB 195 as amended.