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HB 778/SB 630 – Circuit Court Judges – Selection and Retention Elections CONSTITUTIONAL AMENDMENT

These bills reduce the politicization of the circuit courts, while maintaining voter input through an election, and add a requirement of Senate confirmation after appointment by the Governor. The bills alter the method of electing circuit court judges, from contested to retention elections, and reduce the term length from 15 to 10 years, consistent with the term of all other Maryland judges. HB 778/SB 630 are consistent with the recommendations of the Judiciary’s Workgroup to Study Judicial Selection, which produced a comprehensive report following a 22-month investigation.

See <https://online.flippingbook.com/view/994939268/>.

Current Hybrid Selection Model

The Maryland Constitution provides that judges must have resided in Maryland at least five years, be at least thirty years of age, and shall be selected from those admitted to practice law **“who are most distinguished for integrity, wisdom and sound legal knowledge.”**

Appointed Judges – Since 1970, all judges appointed by Governors are selected from lists submitted by Judicial Nominating Commissions, composed of lawyers and laypersons. The Commissions receive and review detailed applications and writing samples from persons seeking appointment as well as recommendations from at least 14 bar associations, which also interview applicants, and letters of support from other interested persons. The Commissions then interview the applicants and nominate the persons they find most legally and professionally qualified. Governors also receive the applications of the nominees, along with whatever other material may be sent. Governors usually interview the nominees before making the appointment. The process involves a **careful examination of the qualifications** of all who seek the appointment. The goal is to elevate consideration of merit above ordinary political factors¹. The nominee appointed by the Governor is sworn in, begins serving as a circuit court judge, and then at the next state or federal election in Maryland, files a certificate of candidacy and sits for an election that may be contested.

Candidates on the Ballot Only – There is no requirement that the candidate go through the Judicial Nominating Commission process or submit themselves to the extensive process outlined above. An attorney who has resided in Maryland at least five years, is at least thirty years of age, and admitted to practice law in Maryland, need only file a certificate of candidacy. The process then becomes immediately political.

Why are Contested Elections Inappropriate for Judges?

- Citizens deserve to have confidence that their rights are protected by independent, highly qualified, and impartial members of the bench. The Judicial Nominating Commission process allows for that thorough consideration.
- Judicial decisions should not be swayed by politics but should be governed by the rule of law. Contested elections inject a perception of politicization.
- Campaigning for a contested election requires fundraising, which creates the appearance of bias or impropriety. Such activity also raises safety concerns during certain campaign activity.
- Most campaign donations come from attorneys, who are the most interested in contested judicial elections, but also most likely to appear before the judge for whom money is raised. This raises concerns about judicial independence and public perception of the judiciary.

¹ Report and Recommendations, Workgroup to Study Judicial Selection, July 2024, p. 49-50.

- Sitting judges cannot campaign like elected officials – they are prohibited from commenting on cases or making policy pronouncements. It would be unethical to say things such as: “I am tough on crime.” Challengers are less constrained during the campaign process. This discrepancy presents challenges for voters.
- Citizens may not have information from which to distinguish qualified candidates from unqualified candidates.
- Politicization of contested elections undermines the public’s trust and confidence in the impartiality and independence of the judicial branch.

Why Retention Elections?

- Retention elections, after Senate confirmation and public education, allow for the public to have a voice.
- Retention elections are non-partisan – reducing the appearance of political bias.
- Retention elections ensure that judges are first thoroughly vetted by Judicial Nominating Commissions.
- Retention elections obviate the need for fundraising, reducing the appearance of impropriety or potential ethical concerns.
- Retention elections provide a process to ensure compliance with the constitutional mandate that judges should be “most distinguished for integrity, wisdom, and sound legal knowledge.”

It is time for Maryland voters to be given the opportunity to decide whether contested elections are achieving or interfering with the goal of public confidence in a highly qualified, impartial, and independent judiciary.

Workgroup to Study Judicial Selection

The Judiciary established the Workgroup to Study Judicial Selection in 2022 to perform a fair, balanced, and comprehensive examination of selecting and retaining trial judges. They studied relevant data, research, and best practices among the states; held public hearings; and received testimony and input from academic and policy centers; state, local and specialty bars; citizens; members of the executive and legislative branches; and various other interested persons. **This bill’s recommendation for retention elections follows the Workgroup’s recommendation.**

Diversity on the Bench

The Workgroup to Study Judicial Selection recommended that the Governor prioritize diversity when making appointments to the Judicial Nominating Commission; specifically racial, ethnic, gender, and geographic diversity of Maryland, specialty bar association membership, and diversity in practice areas of the law. **Governor Moore’s executive order on Judicial Nominating Commissions incorporated this recommendation.**

The Workgroup found that Maryland judges are broadly representative of the population of Maryland. As of April of 2024, 51% of Maryland judges identified as female and 49% male. Additionally, the black/African American judicial representation (30%) was consistent with Maryland’s most recent census data (29%). This representation is largely the result of Judicial Nominating Commission membership becoming more diverse and gubernatorial appointments reflecting the communities served. **Contested Elections do not guarantee a diverse bench.**

The broad diversity gains may also be undermined by certain contested elections, which may not adhere or appeal to those goals. **Contested elections may impede the ability of smaller represented groups in the community to get a fair opportunity for representation on the bench.**