



SB630/HB778 Circuit Court Judges – Selection and Retention Elections FAVORABLE

The Maryland Association for Justice fully supports the July 2024 Final Report and Recommendations of the “Workgroup to Study Judicial Selection.” We commend the process, research, open meetings, public hearing, and thoughtful evaluation reflected in the 64 page report and over 700 pages of appendices. This position paper will focus on reasons to adopt retention elections for Circuit Court judges.

HISTORY OF MARYLAND JUDICIAL ELECTIONS

A 2016 comprehensive article reviewed Maryland Constitution judicial election history. Originally, judges were not subject to election. The 1850 Maryland Constitutional Convention revision (ratified by the voters in 1851) adopted contested judicial elections for the first time. Y. Kuperman, *Whose Bright Idea Was This Anyway? The Origins of Judicial Elections in Maryland*, University of Baltimore Law Forum, 2016. In 1864, the 1850 Constitution was replaced after the Civil War. “The 1867 Constitution is still in force today....” *Id.* at 113, n. 251.

In 2015, The Department of Legislative Services prepared a study, “Selection and Retention of Judges” (Workgroup Report, Appendix C). That report documented the Maryland Circuit Court selection and election process.

REASONS TO ADOPT CIRCUIT COURT RETENTION ELECTIONS

Voters No Longer Know Judicial Candidates

One view for contested judicial elections is that local jurisdiction voters should select the judges because they know the candidates best suited for their community. Where knowing local judge candidates might have been a valid initial rationale, it is no longer accurate for many reasons.

Immense changes in Maryland population and electorate have occurred since 1864 or 1867 summarized by the chart below that reflects the huge increases in voter numbers, the percent of population that votes, and increased population. For example:

Presidential Election	Maryland	A Arundel	Pr Georges	Balt Cit	Wicomico	Carroll
1864 votes cast	72,647	1,990	5,121	89,457	1,885	7,274
2024 votes cast	3,038,334	311,572	404,009	230,754	46,912	102,651
Voters registered 2024	4,204,572	413,786	604,477		66,196	129,226
Increase 1864/1892 to 2024	4082%	15557%	7789%	158%	2389%	1311%
			Note 1	Note 1	Note 2	Note 1
POPULATION	Maryland	A Arundel	Pr Georges	Balt Cit	Wicomico	Carroll
1860 census population	687,049	23,900	23,327	212,418	15,802	24,533
2020 census population	6,177,224	588,261	967,201	585,708	103,588	172,891
Increase 1860 to 2020	799%	2361%	4046%	176%	556%	605%
					Note 3	

VOTERS v. POPULATION	Percent voting versus population					
Jurisdiction	Maryland	A Arundel	Pr Georges	Balt Cit	Wicomico	Carroll
1864, 1892 % pop. voting	11%	8%	22%	42%	12%	30%
2024 % pop. voting	49%	53%	42%	39%	45%	59%
NOTES						
Note 1, 1892, not 1864 Pres. Election						
Note 2, 1868, not 1864 Presidential Election						
Note 3, 1870 census, not 1860						

People casting votes in all of Maryland increased by over 4,000% and population by almost 800%. Similarly, Prince George’s County voters increased almost 8,000% and population around 4,000%. And in Carroll County, voters increased 1,311% and population by over 600%. This is explosive growth in 130 or 160 years from when contested judicial elections were instituted. In the 1800’s, except in Baltimore City, the number of people who voted was a fraction of the voters in 2024. A candidate could be known by a large percentage or all voters in the 1800’s elections. In 2024, contacting the huge number voters in even smaller counties would be expensive and difficult – especially for a sitting judge who works full time during the day and, often, at night and weekends to keep up with judicial duties. In the 1800’s, voters and citizens might know or be informed about judicial candidates. Today, however, it is almost impossible for a judicial candidate to connect with voters and citizens. This justifies adopting retention elections rather than contested judicial elections.

Differences Between Judges and Political Officials. Without immediate checks and balance that apply to all other political elected officials, Judges have almost unlimited power to affect citizens’ lives. Judges make life-affecting decisions every day in cases dealing with, for example, divorce, custody, criminal conduct, business disputes, personal injury, etc. Unlike other political offices that require majority votes, cooperation, and compromise, a circuit court judge acts alone deciding most matters in which someone wins and the opponent loses. All other elected officials have checks and balances such as County Executive and County Council, Governor and General Assembly, or Mayor and City Council. Those legislative versus executive officials can be prompt and immediate to prevent bad decisions or overreaching. All elected officials can be thrown out in four (4) years if the voters are dissatisfied. Not so with a Circuit Court judge. Only appellate courts are checks and balances for the power of a trial judge. Appeals are expensive and very time consuming, not immediate or prompt relief for a bad judge decision or overreaching. Voters can only throw out a judge who seeks another 15 year term (which many do not) which is a long time between elections.

5-year Experienced Lawyer May Run. Under the Maryland Constitution, any lawyer who is 30 years old who resides in a county for at least 5 years may be a judicial candidate. Md. Constitution, *Art. IV, Sec 2*, Judiciary Dept. If an inexperienced lawyer shared a name with a famous person (e.g. Will Smith), one could speculate that voters might elect that lawyer based on name recognition.

Rigorous Applicant Evaluation, Vetting, Selection. Currently, Circuit Court judges are selected through a meaningful process that includes the detailed application, vetting by up to 15 law oriented groups (Bar Associations, Law interest groups, civic groups, etc.), the Judicial Nominating Commission, the Governor’s appointments office, the Governor’s legal staff, and the Governor. No elected political official undergoes this type of intense scrutiny, evaluation, selection, and appointment. The goal is to ensure that qualified lawyers become judges “... who are most distinguished for integrity, wisdom and sound legal knowledge.” Md. Constitution, *Art. IV, Sec 2*, Judiciary Dept. The public seldom knows or understands the application or vetting process that appointees went through versus a candidate who files as an election candidate who may never have been vetted. But any lawyer with five (5) years legal experience can register in the current contested judicial election and be elected without being subjected to the intense evaluation of the appointed judge.

Discourages Quality Appointees. The current contested election process discourages successful lawyers from seeking judicial appointment. A lawyer abandons a successful law practice to face the chance of losing in a general or primary election.

County-Wide Election. Judge candidates run county-wide. It is hard to inform all voters about the appointed judge's rigorous selection process and qualifications versus challengers. Judges face restrictions on time, activities, and campaigning. In contrast, a challenger with no daily judge duties has great flexibility to campaign and raise money.

Finances. Attached is a brief summary of amounts raised by judicial election candidates that come from reviewing the Maryland State Election Boards finance reports. For the county-wide elections, over \$200,000 must be raised. In the Anne Arundel County 2010 judicial campaign, the challenger who prevailed in the election then held a post-election party to retire her debt even though she was going to be sworn in as a sitting judge. The Challenger raised about \$168,000 before the November 2 election and \$161,500 AFTER BEING ELECTED A JUDGE. The MJCCC found that there was no prohibition against post-election fundraising by the elected judge.

Ethical Considerations. A criticism of the current judicial election system is that judicial candidates must raise a substantial amount of money. People connected with the legal profession are the most likely contributors that may be a conflict of interest. This system may lead to complaints that a judge favors or disfavors people because they did or did not contribute. In addition, there are ethical concerns that judges are soliciting money from people connected with legal profession. Judges must be circumspect when campaigning. Other non-judge candidates can say or promise anything.

Judges Are Not Politicians. Most judges have been practicing attorneys and never ran for election. When appointed, they are thrust into an election campaign. An appointed judge may be extremely qualified to make decisions but not have an aptitude for meeting people, giving campaign speeches, fundraising, etc. Sometimes, the timeline for elections is very short. A challenger might be someone who is very political, an elected official, or has a schedule that permits active campaigning.

Judge Elections Differ From Any Other Election. All other election candidates choose to run, organize life and work to make campaigning time, and prepare financing and campaign infrastructure before filing. It is impossible for an appointed judge to take these steps. When appointed, the new judge must close law practice within 30 days. After appointment, a new judge is learning this new full-time job and attending orientation and classes.

Voter Misunderstanding. Judge elections are a unique -- for 15-year terms. Other elected officials are reviewed and elected every 4 years. Yet, judge elections on the ballot look like and other offices.

Confusion, NOT Non-Partisan. Judicial candidates are designated "judicial" party and not Democrat or Republican. It might be considered unethical for the appointed judge to identify party affiliation when campaigning. A challenger, however, is not restricted. Judicial elections are PARTISAN (NOT non-partisan). *See Suessmann v. Lamone*, 383 Md. 697, 729 (2004).

Retention Election Makes Sense. Changing to a retention election avoids almost all the above issues. No risk of a popular or name-recognized candidate displacing an appointed judge who was vetted and selected. Challenger misconduct would be largely eliminated. Ethical considerations (like those above) would no longer exist due to limited fundraising or comments from other candidates, interest groups, political parties, etc. Public misunderstanding would be eliminated. A greater number of highly qualified lawyers would likely seek judicial appointment since the chance of an election loss would be substantially eliminated.

The Maryland Association for Justice urges a FAVORABLE Report on SB630/HB778

About Maryland Association for Justice

The Maryland Association for Justice (MAJ) represents over 1,250 trial attorneys throughout Maryland.

MAJ advocates for preserving the civil justice system, protecting consumer rights, and educating members for professional development.

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Summary of Selected Judicial Elections					
From Review of Selected Judicial Campaign reports					
By Ron Jarashow review of campaign reports					
		Judicial	Amount Contrib		
<u>Amount raised</u>	<u>Yr Election</u>	<u>Candidate</u>	<u>by Candidate</u>	<u>County</u>	<u>NOTES</u>
\$168,334	2018	Mark Crooks	\$27,000	AA	Only through Primary.
\$200,898	2010	Jarashow / Kiessling		AA	
\$260,677	2016	Vitale, Schaeffer, Klavans, McCormack		AA	
\$261,780	2008	Baltimore City Slate		Balt. City	
\$159,082	2014	Baltimore City Slate		Balt. City	
\$372,370	2016	Baltimore City Slate		Balt. City	
\$167,985	2010	Alison Asti	\$121,000	AA	BEFORE NOV 2 vote
\$161,463	2010	Alison Asti		AA	AFTER NOV 2 vote