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February 12, 2025

The Honorable Luke H. Clippinger  
Chair, Judiciary Committee  
House Office Building  
Annapolis, MD 21401

**Re: HB 778 Circuit Court Judges – Selection and Retention Elections**

Dear Chair Clippinger and Members of the Committee:

I am Donald Tobin, the former Dean of The University of Maryland Francis King Carey School of Law, a professor, and a member of the Workgroup to Study Judicial Selection. I appreciate the opportunity to testify and express my support for HB 778. I support HB 778 because it promotes the rule of law, an independent judiciary, the recruitment of excellent judges, and reduces judges' involvement in the political process.

The judicial system and judges in Maryland are exceptional. We have been lucky in Maryland that the rule of law, and not political pressures, has been the cornerstone of our justice system. The system is working, thanks to the dedicated professionals in all three branches of government that have respected an independent judiciary and worked to make it an example throughout the nation.

As dean, I saw a judiciary active in the community, collegial with the bar, and rendering decisions that were fair and without bias. Despite our excellence, however, I am here today because we can and should do better. While all of our judges are originally appointed by the Governor, only circuit court judges are required to run for office through contested elections. Having judges run in contested elections distracts judges from their core functions, makes judges responsive to the electorate instead of the rule of law, and defaces the justice system by leaving the impression that judges are “political.” I am not suggesting that elections which bring candidates close to voters and allow for interaction between the candidate and citizens are not an essential part of our democratic process, but that elections are not an essential, or even preferable, characteristic of a fair and independent judiciary. Early in my career, I spent eight years working for a Maryland politician, and I have great respect for both elected officials and for our democratic system. But, as Maryland has recognized with every other level in our court system, judges are not, and should not be, politicians.

The Workgroup to Study Judicial Elections, co-chaired by Judge Kathleen Dumais and retired Judge Alexander Williams engaged in a thorough examination of Maryland’s judicial appointment and election system. We heard from experts in the field, citizens, practitioners, and



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judges. We held hearings and received input from a broad range of constituents. What was clear is that all participants wanted a system of justice in Maryland that would provide for an excellent and independent judiciary, and one that was diverse and representative of Maryland.

We reviewed best practices for judicial selection, evaluated academic studies, and examined the history of judicial selection in Maryland. We also heard from Marylanders, judges, people interested in being judges, and people involved in the legislative process. After reviewing this information the Workgroup almost uniformly endorsed the idea of shifting from competitive elections for circuit court judges to appointment by the Governor with retention elections.

From my perspective, the current system works because in most cases appointed judges are ultimately elected to their positions. Contested elections do not improve the quality of our judiciary or the quality of individuals selected. In fact, contested elections lack the kind of vetting that happens when a judge is appointed. In Maryland, at all levels of the judiciary, appointed judges go through a significant vetting process. Applications are reviewed by a nominating commission and the nominating commission provides a list of candidates to the Governor. This process ensures that candidates have the requisite skill, demeanor, and experience to make an excellent judge or justice. Candidates also meet with various bar associations and those associations provide feedback to the Governor. The Governor then chooses a nominee from the list of names provided by the Commission. In all cases except for the circuit courts, the nominees must then be approved by the Senate and face only retention elections.

This process ensures competence, expertise, and respect for the views of the citizenry. Even though only circuit court nominees are ultimately elected, the public has significant input to elected officials both at the appointment stage and through advice and consent of the Senate. Moreover, for all the positions except those in the circuit court, retention elections provide a check by the citizenry if the voters believe the process is producing nominees that are not properly qualified or are not competently carrying out their duties. This process ensures that nominees are highly qualified and encourages independence, but it provides a check on any abuses that may occur in the system.

Contested elections move away from this merit-based selection and require judges not just to be excellent jurists but also effective fundraisers and campaigners. The qualities that make a good judge are often not the qualities that make a good politician. That is not a criticism. A strong system that stresses rule of law should seek an apolitical judiciary.

Once judges are required to participate in competitive elections, we drastically move away from meritocracy. Voters are usually not informed about judges and have very little information regarding the quality of a judge's work or decisions and often lack the expertise to evaluate a judge's decisions. In addition, sitting judges should be very cautious about discussing



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current cases or issues during a campaign. It puts sitting judges at a significant disadvantage in elections, especially if opposing candidates are mischaracterizing a judge's decisions or views.

As someone active in the legal community and fairly knowledgeable about judges in the state, I often get calls from friends asking me about the judges running for office. For the most part, they just want to ensure that they are not voting for someone who is outside the norm. In most cases I know the judge, but in some I do not. I say this to illustrate that if someone who interacts with judges on a regular basis does not always have adequate information about the quality of a judge, how can we expect the average citizen to make informed decisions?

Increased information to the public can help, but when there are statewide races with millions of dollars seeking to sway voters, it is unrealistic to expect that the citizenry can be fully and accurately informed about judicial candidates. This increases the probability that judges will be selected based on where they are on the ballot, name recognition, or popularity: irrelevant characteristics when selecting jurists.

Finally, judicial elections fundamentally alter the impression that judges are apolitical and render decisions based on the rule of law. How would litigants feel if they knew the opposing lawyer had made large campaign contributions to a judge? How do we feel about candidates seeking contributions from lawyers and law firms?

If we believe Judges are like umpires calling "balls and strikes" then we need to protect their independence. We certainly would not want Yankees fans choosing the umpires.

Maryland has a Judiciary that is second to none. It is independent, apolitical, and well-qualified. While judicial elections may have served a purpose when the merit selection process was stacked against certain groups of people, the selection process in the district courts, the Appellate Court of Maryland, and at the Supreme Court indicates that the merit selection process, with retention elections and confirmation in the Senate, provides the right mix of merit-based selection and a check on the process by both the Senate and Maryland voters. I urge you to support HB 778.