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Delegate J. Sandy Bartlett, Chair
Judiciary Committee
101 Taylor House Office Building
Annapolis, Maryland 21404

RE: HB150 – Circuit Court Judges – Selection and Retention Elections - Unfavorable

Dear Madam Chair, Vice-Chair, and Members of the Judiciary Committee:

I am writing in my individual capacity, and not on behalf of the Maryland Judiciary. My judiciary contact information is being utilized to protect my privacy. I write today in opposition HB150.

I am an Active Judge on the Carroll County Circuit Court. I was a member of the Workgroup to Study Judicial Selection (hereinafter "Workgroup"). I was also a candidate for my position in the November 2018 election, where I successfully unseated a gubernatorial appointee.

I ran for my position because after applying four times and having seen many qualified women passed over for appointment to the Carroll County Circuit Court, it became imperative to seize every opportunity to finally see a woman on the Circuit Court – the Judicial Selection process having failed to achieve this since the creation of the County Courts in 1775.

It is for those reasons that I submit this testimony. The Workgroup, of which I was an active participant, had many meaningful discussions regarding the entire revamping of the Judicial Nominating Process. I believe I was asked to be a member of the Workgroup because I am respected member of the Judiciary. Many of us who opposed the ultimate recommendation in the Report, stated we would be more inclined to favor retention elections, only if the entire process was revised. I speak only for myself when I say that a system of appointments that permits one person to make an appointment, based on the recommendations of a committee that is voluntarily created by an Executive Order signed by the same person, and whose members are appointed by that same individual, and whose recommendation can be entirely ignored again by that same person, is not a meritorious process.

My opposition is not directed toward any specific Governor. In fact, I suggested that the implementation of any recommendation we made should be deferred until after the Governor's current term, so as to not dilute the power of appointment of our current Governor.
If we have learned nothing over the last decade, hopefully we have learned that an unchecked lengthy or lifetime appointment will have lasting consequences for generations.

To look at the composition of Maryland's judiciary as a whole and say "look we fixed the diversity problem" is not only inaccurate, but also misleading. I will take only my county, Carroll, as an example. Carroll County has two district court judges, and four circuit court judges. We have had a Hispanic applicant, African American applicants, and female applicants. The only female to ever sit on any bench in Carroll County until 2018, Judge JoAnn Ellinghaus-Jones, was appointed to the District Court by Governor Shaefer in 1991. She remained the only female on the bench in either court, until her replacement, Judge Erin Danz, was selected in January 2018. In November 2021 Judge Cara Lewis was appointed to the district court bench. To date, there are two white women on the district court, and in addition to me, three white men on the circuit court. I am the only woman on the circuit court, I am Caucasian, and I had to fight like hell to get here. This is not a statement against my male colleagues. Please don't read that into my testimony. However, the circuit court judges can overrule any ruling of the district court judges that is appealed. So, it is not an accurate analysis to say, "oh look now it's even, Carroll finally has three women and three men" (a statement that is now often made since Judge Lewis was appointed).

When I ran, in addition to my qualifications, my platform included the failure of the process to appoint any women to the Circuit Court. The voters responded and I was elected in November 2018. However, despite the will of the voters, since my election, two more white men have been appointed to the circuit court, including the reappointment of the individual I defeated. A very common practice, I might add. To this date, despite applications from many, no woman or member of any underrepresented population has ever been *appointed* to the Circuit Court in Carroll County. Ever.

Until the unfortunate unseating of Judge Jackson-Stevenson in Anne Arundel County, (who has also been reappointed), no minority or member of an underrepresented group had been unseated in Maryland since 2002 when Judge Alexander Wright, (who was ultimately appointed to the appellate court), was twice unseated by white male opponents. (See "Contested General Elections 1986-2022). Every other successful unseating since then, has removed a white man from the bench.

So, it would be false and misleading to point to the campaign of Judge Jackson-Stevenson and say "judicial elections are causing us to lose all minority appointments" – that has simply not been the case historically. And to take the rights of voters away without fixing the judicial nominating process would be a detrimental mistake and leave counties like Carroll at the mercy of a broken, flawed system that still fails to see the value of women and underrepresented persons on the bench.

If you want an unbiased analysis of judicial elections, the proper group to do so is not a group of interested judges who will benefit from a specific recommendation. Of the judges on the Workgroup, a majority were appointed circuit court judges, including judges who lost their

seats due to a contested election, and a minority were circuit court judges who had successfully unseated gubernatorial appointees or were appointed despite the vetting process not recommending their appointment. While I do not mean to undermine the efforts of the Workgroup, you simply cannot ignore the existence of "confirmation bias" when a group of interested persons "studies" a "problem" and makes a recommendation from which they will uniquely benefit. Let's be clear - I would also benefit from the elimination of judicial elections because at the end of my 15-year term, I will have to either run again, or retire. Nonetheless, opposing this Bill is the right thing to do.

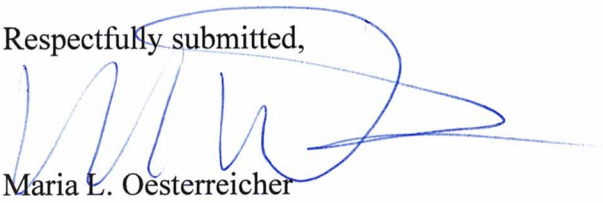
The Workgroup, and generally opponents of judicial elections point to the lack of education of voters and the risk of electing unqualified judges. First, this is a flawed premise. The primary, if not only, ones complaining that there is a problem are the judges who are required to run for election. Second, taking the choice away from the voters because the judiciary and legal community have failed to educate the voters is not the proper way to correct the perceived problem. It just replaces their perceived problem with an actual serious problem. If attorneys who appear in front of judges cared enough about the issue, they would donate to campaigns, they would form PACS, and they would use their feet to get out and educate voters. Taking the vote away from citizens, only ensures that one person – a Governor – who may or may not align with your politics, gets to decide who will rule over decisions affecting every aspect of your life, and the lives of your children.

Proponents of this bill will undoubtedly point to the removal two years ago of a Prince George's County Circuit Court judge who ran for election as an example of the issues that may arise when a candidate for judge unseats an appointed judge. However, that argument is a red herring. Far more appointed judges have been removed from office, sanctioned, or forced to retire early, for ethical violations, than judges who were elected. The argument is entirely misleading and without merit. No process is 100% accurate at identifying which judges are likely to run afoul of the rules - but the fact remains that the removal of appointed judges supports my argument that the current "vetting" is perfunctory – it is not a meritorious process. Nonetheless, many of the people that run for judge, me included, have subjected themselves to the vetting process on multiple occasions – to say that people who run for judge are skipping the vetting process is not accurate. Sometimes running against an appointed judge is a last resort and is only way to create diversity.

We are witnessing right now the unmistakable fact that all leaders do not believe in diversity, equity, or inclusion, or the value that those ideals provide. We may not always have a Governor who believes in diversity. And at this point in our history, removing opportunities for diversity is not what we want to be doing. Nor should we place our faith to provide those ideals into the hands of one individual, regardless of the admiration we may have for the person currently holding the power.

I therefore urge an unfavorable vote for HB150. I am available to answer any questions you may have.

Respectfully submitted,



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