

Stop Using Elections to Get the Best Judges Money Can Buy

By Delegate Jon S. Cardin, District 11

For nearly 20 years, I have sponsored legislation to reform the way our circuit court judges are selected. Specifically, I have called for a change to retention elections, essentially allowing judges who are appointed to remain on the bench for the duration of their 15-year term unless there is a clear reason for them to be removed. Over the past few years, from Anne Arundel to Baltimore, to Prince Georges to Harford, we have seen multiple instances of campaign misconduct and inappropriate behavior instigated by judicial candidates and elected judges. For that reason, this year the Judiciary, with the support of the Governor, has introduced the bill, and I will defend it vigorously. Unless we remove competitive elections, it does a disservice the integrity to our judiciary, reduces confidence in our courts, and makes opaque the basic premise of the Rule of Law.

Opponents of eliminating judicial elections argue that elections provide a crucial mechanism for democratic accountability. This manifests itself in two ways. First, there are those like my friend William H. "Billy" Murphy, Jr. who worry that racism can play a role, and if there are no elections, minority communities would be less represented on the bench. Second, without elections, judges may become less responsive to the communities they serve. Both of these arguments are inextricably flawed. Larry Hogan, a republican with relatively little support from the minority communities around the state, appointed more minorities to the bench than any Governor preceding him. He did this because in the 21st century, diversity is important for the proper functioning of governmental bodies, including the judiciary. Also, one of Wes Moore's first acts as governor was to call for and oversee the reformation of the judicial nominating and vetting process. He has instilled in the nominating system a requirement for diversity and a focus on competence and integrity, ensuring that our judicial nominees are both fit to serve and maintain wide perspectives in understanding the needs of the entire community.

Additionally, opponents suggest that there is a risk that a non-elected/appointment system could lead to politically motivated selections, where governors and commissions favor candidates based on political connections rather than legal qualifications. Critics also point out that removing elections takes away public input in the judiciary, divorcing it from the people it serves. Both these arguments have no merit. First, the nomination process has been well reformed through the implementation of dozens of recommendations from a blue-ribbon taskforce, demonstrating that the commissions are divorced from political influence and focused on providing the governor a disinterested list of qualified candidates to choose from. Furthermore, to argue that we need elections so that the public has "input" into the judiciary is troubling. That is to say, judges should be selected based on merit qualifications and ability to manage legal decision making, and NOT be selected because the community needs to feel they should have input on the judges. I would go so far as to say that orchestrating "close connections to judges" leads to conflicts of interest. Using democratic accountability as a way to prevent judicial elitism is preposterous, as I have watched elected judges become snobs and appointed

judges remain humble.

Eliminating contested elections will enhance judicial independence, prevent conflicts of interest, and ensure that only the most qualified individuals serve on the bench. One of the main reasons for eliminating judicial elections is to preserve judicial impartiality. Judges should base their decisions strictly on the law, yet elections force them to campaign, potentially influencing their rulings, or just giving an appearance thereof. Interestingly, appointed judges running for a contested seat are prohibited from discussing judicial decisions during a campaign, but their opponents are not prohibited. That is an intolerable double standard. Additionally, the need to fundraise for campaigns often leads to ethical concerns, as nearly all contributions come from lawyers and interest groups who appear in court. The conflict of interest is apparent and dangerous to the integrity and confidence of our courts.

Eliminating elections creates consistency and professionalism in the judicial selection process. Appellate and district court judges are appointed, while circuit court judges face elections. A uniform, merit-based appointment system would ensure that all judges are chosen based on legal qualifications rather than on campaign coffers.

To that end, there will always be a lack of voter awareness in judicial elections. Unlike high profile political races, judicial campaigns receive little media coverage, leaving voters uninformed about candidates' qualifications, records, and judicial philosophies. This lack of information can lead to unqualified candidates winning based on name recognition ballot placement, campaign alacrity, or fundraising ability, rather than their legal expertise. Additionally, contested elections allow any lawyer to run, even if they lack judicial experience or temperament. Our merit-based nomination system ensures that judges are selected through a rigorous vetting process rather than campaign strategies. Finally, sitting judges cannot comment on judicial opinions or judicial philosophy, whereas other candidates can and do. This puts sitting judges in the untenable situation of appearing aloof or ignorant.

The risks posed by judicial elections—such as political pressures, fundraising conflicts, and the election of unqualified judges—outweigh any benefits. We have a nonpartisan judicial nominating commission that vet candidates based on legal expertise, temperament, diversity and ethics, ensuring selections are based on qualifications rather than political influence. And the process can easily adapt to updated best practices. The governor approves appointments from the commission's recommendations, adding an additional layer of oversight. Leave the campaigning and fundraising to the politicians and keep our judges in court.

Jon S. Cardin has been a practicing lawyer for 25 years and has served in the Maryland General Assembly for nearly the same amount of time. For the past seven years he has served on the Judiciary Committee and chaired the Civil Law and Procedure Subcommittee. He is adjunct faculty at the University of Maryland School of Law where he teaches a class on advocacy and ethics.

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MARYLAND JUDICIAL COUNCIL LEGISLATIVE COMMITTEE

MEMORANDUM

TO: House Judiciary Committee
House Government, Labor and Elections

FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523

RE: House Bill 150
Circuit Court Judges – Selection and Retention Elections

DATE: January 21, 2026
(2/11)

POSITION: Support

The Maryland Judiciary supports House Bill 150.

The Judiciary supports efforts to eliminate contested judicial elections for circuit court judges, in order to meet the important goal of maintaining judicial independence and impartiality. This bill mirrors legislation the Judiciary introduced last year which was recommended by the Workgroup to Study Judicial Elections. This approach requires circuit court judges to stand for retention, rather than contested, elections, following a thorough vetting process and gubernatorial appointment with the advice and consent of the Senate. The link to the Workgroup's comprehensive report and recommendations may be found at the following link: <https://online.flippingbook.com/view/994939268/>.

The Workgroup was formed to perform a fair, balanced, and comprehensive examination of selecting and retaining trial judges. It was comprised of a diverse group of community members, lawyers, appointed and elected judges, law school deans, and policy experts. The Workgroup studied relevant data and research;

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.

As noted on page 54 of the Workgroup report:

[R]etention elections obviate the need for judges to raise money for elections. The importance of this to the independence of judges cannot be overstated. The Workgroup found that in Maryland, and in many other states, the overwhelming majority of funds raised by Circuit Court or trial judges in recent contested elections is from lawyers who will appear before the very judge who is raising the money. The lawyers are the most interested in such races and, thus, the natural supporters. However, the appearance and actuality of judges raising money from interested lawyers who will seek favorable rulings from the judges raises fair concerns about judicial independence. Moreover, while the Maryland Code of Judicial Conduct appropriately prohibits judges from attending political fundraising events, there is a necessary exemption for candidates running for election. Thus, judges running in a contested election create the appearance of violating this very requirement by attending their own and other political fundraising events. Contested elections create an array of potential ethical violations and untoward appearances that serve to undermine the public's trust and confidence in this branch of government."

The propriety of the election of judges to the circuit courts of Maryland has been vigorously debated since the 1850-51 Constitutional Convention. A primary goal has always been, to the extent possible, to separate the election of judiciary officials from influence by political organizations.

There was also a comprehensive review of judicial elections in 1996 by the Commission on the Future of Maryland Courts. The Commission, a bipartisan assembly composed of distinguished members from each branch of the Maryland government, ultimately recommended that circuit court judges should be appointed by the Governor from a list submitted by a judicial nominating commission, confirmed by the Senate, and thereafter subject to retention elections. The Commission explained:

[A]ll judges initially appointed by Governors are appointed from lists submitted by nominating commissions consisting of lawyers and laypersons. Those commissions receive detailed applications from persons seeking appointment. They receive recommendations

from various bar associations and letters from other interested persons. They interview the applicants. From all of this material and their own perceptions from the interviews, they nominate the persons they believe most qualified. Governors also receive the applications of the nominees, along with whatever other material may be sent. Governors usually interview the nominees before making a choice. The process involves a careful examination of the qualifications of all who seek the appointment and the elimination of those thought to be unqualified or less qualified.

That review, that screening, is entirely absent when a challenger is initially elected. *Commission on the Future of Maryland Courts, Final Report Presented to the Governor and General Assembly of Maryland, Annapolis, at 58 (1996).*

The Commission's primary concern when a candidate in a judicial election has been neither appointed nor nominated was that "[q]uality control at the very beginning is absent." *Id.* at 59. The 2024 Workgroup to Study Judicial Selection reached a similar conclusion.

The Judiciary continues to support efforts to make the process by which judges are elected less political. Given the thorough and comprehensive report and recommendations of the Workgroup to Study Judicial Selection, the Judiciary supports this legislation.

cc. Hon. Jon Cardin
Judicial Council
Legislative Committee
Kelley O'Connor

MARYLAND MATTERS

New fight, old arguments: Senate, House panels debate contested circuit court elections

A judicial work group's report renews push to get rid of contested races; opponents say that would take away voter choice

By: William J. Ford-February 12, 2025 11:12 pm

Maryland Supreme Court Chief Justice Matthew Fader and Carroll County Circuit Judge Maria L. Oesterreicher agree that the state's current system of choosing circuit court judges at the ballot box allows for the broadest possible pool of candidates.

They disagree on whether that's a good thing or a bad thing.

That was the crux of arguments that stretched over several hours of testimony Wednesday, as Senate and House committees held back-to-back hearings on a proposed constitutional amendment to change the way circuit judges are selected.

Appellate judges in the state stand every 10 years for retention elections — voters give a thumbs up or down on whether the judge should continue on the bench. But circuit judges stand for election every 15 years, and when they do they can face challengers who file to run against them, just like candidates in any other political race.

Critics say the system opens the door to unqualified candidates and forces sitting judges to act like partisan candidates instead of impartial jurists.

“This is a bill that is aimed at increasing public trust and confidence in the judiciary, minimizing perceived conflicts and ensuring that every judge in the state has been thoroughly vetted and found most fully qualified by a neutral panel before taking office,” Fader said to the Senate committee.

From left, Carroll County Circuit Judge Maria L. Oesterreicher, Rob Daniels, who ran unsuccessfully in Baltimore County, and Claudia Barber, who ran

unsuccessfully in Anne Arundel County, testified against changing the system.
(Photo by William J. Ford/Maryland Matters)

But supporters say the system gives voters a full voice in the selection of judges, and that contested elections increase diversity on the bench by opening the door to candidates who are not part of the network of lawyers who nominate judges. Oesterreicher cites herself as a case in point.

“I remain the only female that has ever been placed on our circuit court,” Oesterreicher, who won in a 2018 election, said of the Carroll County bench. “This [a proposed constitutional amendment] is not the proper way to fix the issue of judicial selections.”

The hearings Wednesday before the Senate Judicial Proceedings Committee on [Senate Bill 630](#) and the House Judiciary Committee on [House Bill 778](#) are the latest in a decades-long fight over contested circuit judge elections. More than 75 bills have been introduced since the 1980s to change the process, all unsuccessful so far.

But the debate was renewed almost three years ago, when the Maryland Judicial Conference appointed a [judicial work group](#) to study the issue. After nearly two years of study, the group released a [63-page report](#) last year which concluded that contested elections present ethical concerns and pose a risk to judges’ safety in the current political atmosphere.

It recommended doing away with the process and making circuit judges face retention elections every 10 years, like appellate judges in the state.

In both the House and Senate hearings, Maryland State Bar Association President Raphael Santini, a supporter of the bills, pointed to former Prince George’s County Circuit Judge [April Ademiluyi](#), who won the judgeship by unseating sitting Judge Jared M. McCarthy in the 2020 election. But by 2023, Ademiluyi had been charged with violating multiple provisions of the Maryland Code of Judicial Conduct.

After an investigation by the Maryland Commission on Judicial Disabilities, the Maryland Supreme Court in May 2024 ordered Ademiluyi removed from the bench for engaging in “egregious misconduct.”

Critics of the current system said it allows candidates like Ademiluyi to bypass a vetting process by local commissions of lawyers. Those commissions review the credentials of would-be judges and recommend nominees to the governor, who makes the initial appointment of judges — with Senate confirmation — when there is a vacancy on the bench.

Montgomery County Circuit Judge Kathleen Dumais, a state delegate for nearly two decades and co-chair of the judicial work group, said the commissions help make sure the governor receives a list of qualified candidates “who reflect the community.”

Maryland Supreme Court Chief Justice Matthew J. Fader, second from left, testifies to the House Judiciary Committee in support of legislation to get rid of contested races for circuit court judges. (Photo by William J. Ford/Maryland Matters)

To make sure that nominees reflect their communities, former U.S. District Judge Alexander Williams Jr. — who co-chaired the work group with Dumais — said at the Senate hearing that the report recommends that vetting commissions seek input from the public and specialty bars. Those bars are associations of attorneys established by race, gender, legal specialty and sexual orientation.

But hours later in the House hearing, Del. Aaron M. Kaufman (D-Montgomery) asked Claudia Barber, an opponent to the judicial bill, if she thinks the judicial nominating committees and the legal establishment “is somewhat clubby.”

“Yes, it is clubby, and to a certain degree, it is also political,” said Barber, who ran unsuccessfully for an Anne Arundel County Circuit judgeship in 2016, 2018 and 2024. “It’s cliquish. It’s all of that. Which is why oftentimes the best is not always chosen.”

Rob Daniels, who ran an unsuccessful circuit court campaign last year in Baltimore County, testified that the judiciary still does not include anyone from the LGBTQ+ community.

“The impetus for this bill seems to be the false conclusion by the judicial selections work group that we’ve resolved the diversity issue so popular elections are no longer needed,” said Daniels, chair of the LGBTQ Bar Association. “But the work

group has moved the goal posts in the diversity fight by ignoring the dearth of LGBTQ judges in our state.”

A few lawmakers asked whether it’s a good idea to restrict voters’ voices in the selection of circuit judges.

“Whenever we start having these discussions about taking away the public input and we leave it at the discretion of solely the governor...then the people that I represent aren’t getting their fair input into the discussion,” said Sen. William G. Folden (R-Frederick).

If the measure passes, the question would go to voters in the November 2026 election, to decide whether to amend the Maryland Constitution to make the change.

– This story has been updated to remove a reference to district court judges, who do not face election, and to correct the years when Claudia Barber ran for election to the bench.



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February 10, 2025

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Re: Subject: Support for Maryland House Bill 778 and Senate Bill 630

Dear Delegate Clippinger,

On behalf of the J. Franklyn Bourne Bar Association, I write to express our support for Maryland House Bill 778 and Senate Bill 630, which seek to eliminate contested judicial elections for Circuit Court judges and replace them with retention elections following gubernatorial appointment. We firmly believe this change will enhance the integrity, fairness, and stability of Maryland's judiciary.

Circuit Court judicial candidates in Maryland undergo an extensive and rigorous vetting process before being appointed by the Governor. Candidates must submit detailed applications and are subjected to interviews by multiple evaluating bodies, including the Maryland specialty bar associations, County Bar Associations, Maryland State Bar Associations, and the Maryland Trial Courts Judicial Nominating Commissions.

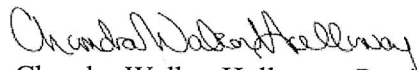
After this extensive review process, only the most qualified individuals are recommended to the Governor for appointment. Once appointed, these judges serve and build experience on the bench. However, under the current system, they may later face contested elections where individuals who have not undergone this thorough vetting process can challenge them for their seats. This is highly problematic, as it can result in the loss of well-qualified, carefully vetted judges to opponents who have never been screened, evaluated, or deemed fit for the judiciary. The current process could result in the election of individuals lacking the necessary legal experience, judicial temperament, or understanding of the responsibilities of the bench. The current system, therefore, undermines the very vetting process designed to ensure a highly qualified judiciary.

In addition, the process of running in a contested election requires judicial candidates to engage in political campaigning, fundraising, and public endorsements. Judges should be focused on upholding the law rather than engaging in electoral politics, which can create the perception—or even the reality—of bias in decision-making. By eliminating contested elections, HB 778 and SB 630 help preserve public confidence in the fairness and impartiality of our courts.

Maryland already uses retention elections for the Maryland Court of Appeals, where judges appointed by the Governor must later receive approval from voters to remain on the bench. Extending this process to Circuit Court judges would bring consistency to Maryland's judicial selection system. This method allows the public to have a voice in the retention of judges while ensuring that only those who have been thoroughly vetted and deemed qualified through the established selection process serve in these critical roles.

Thus, the J. Franklyn Bourne Bar Association strongly supports Maryland House Bill 778 and Senate Bill 630 because they will strengthen the integrity of our judicial selection process, safeguard the judiciary from unnecessary political influence, and ensure consistency across Maryland's courts. The extensive vetting process already in place guarantees that appointed judges are well-qualified, and retention elections still provide the public with a mechanism for oversight. For these reasons, we urge the legislature to pass these bills and modernize Maryland's judicial election process.

Very truly yours,



Chandra Walker Holloway, President

301-661-6422

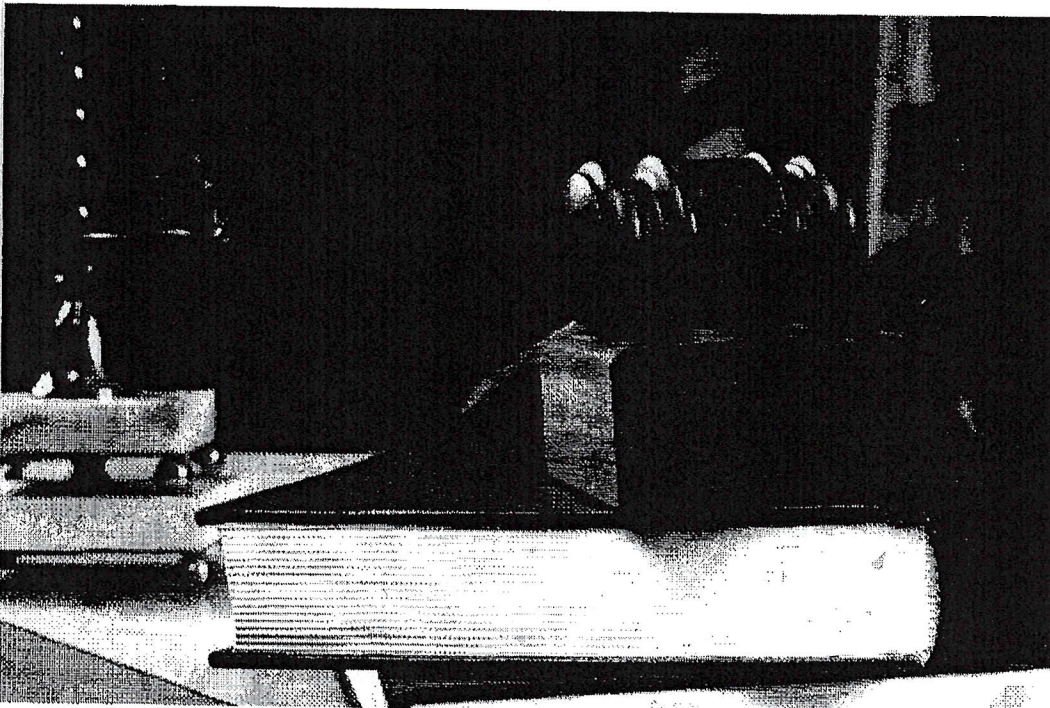
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Maryland's Judicial Election System Needs Fixing Now More Than Ever



Once again the visual of Maryland's judicial elections in several counties and Baltimore City have illustrated the folly of contested elections of circuit court judges. This is particularly evident in Montgomery County, but also elsewhere in the state. This newspaper and others have recently reiterated their editorial position that reform in the form of substituting merit selection and retention elections for the current incoherent and illogical system is long overdue.

Maryland's judiciary should be diverse not only as to race, gender, and ethnicity, but also as to professional background experience and abilities. With that said, there is a consensus that every judge should have the following qualities—

Judicial temperament, intelligence, strong personal and professional ethics, courage and integrity, experience and education, personality and work habits suitable to courts workload. A positive attitude toward continuing legal judicial education, ability to communicate, civic and professional responsibility, good health and sound character.

It is clear therefore that the "system" should focus on selecting, appointing and retaining judges who are diverse and who possess these qualities. What effect do contested judicial elections have on the appointment and retention of judges who possess these qualities? The answer is not a positive affect...That is for sure!

This writer's history and experience is that from the time I arrived in Maryland in 1970 to attend American University Law School until I was elected to the Orphans Court in 1978, I was very involved politically, participating in the management of two state and local political campaigns in which all state and local offices including judicial offices were on the ballot in 1970 and 1974. In 1978 and 1982 I was on the ballot myself and successfully ran for Judge of the Orphans Court. In 1992, I along with two other Circuit Court Judges in Prince Georges County ran unopposed, as it turned out, for election to a 15 year term as a Circuit Court Judge.

For a period of over 15 years then, I was either involved in the management of judicial elections for Orphans Court and Circuit Court or a candidate myself for judicial office. Obviously after 1986 I abandoned any partisan thoughts and activities in order to be a full time judge, first of the District Court and then of the Circuit Court although in the years leading up to my election in 1992 to a full 15 year term as a Circuit Court Judge, I kept a wary eye over my shoulder at potential opposition candidates who would not be similarly, legally or ethically constrained. So I was either involved as a manager or a candidate for judicial office or an informed observer for over 40 years. I'm still watching as it turns out but enjoying it less.

My purpose in referencing my personal political and judicial history is to provide context for my opinion based on over 40 years of managing, participating as a candidate and observing contested judicial elections. That opinion is that contested judicial elections do not have a positive effect on appointing and retaining judges who are diverse and who possess the qualities necessary for Maryland to have judges who are "legally and most fully professionally qualified." In fact contested judicial elections discourage such applicants particularly those with successful private practices from seeking judicial offices.

During the years from 1970 to 2014 while I have participated in and observed contested judicial campaigns, I have **never** seen any of the qualities which are desirable in a judge discussed as an issue in any contested campaign by a challenger. Instead I have witnessed the following issues being raised in campaigns for "Orphans Court" (Probate Court)—

(1) "Whether a Licensed Practical Nurse (LPN) "could do more for orphans than those lawyers." (2) "Whether orphans who commit crimes should go to jail." (3) "The skyrocketing rates of intestacy" (4) "The Orphans Court Judges positions on abortion and (5) Whether as a candidate for reelection to the Orphans Court I would take an orphan away from a "parent" who spanked the orphan and/or do I spank my own children?"

As a candidate for a 15 year term on the Circuit Court I was asked many questions. My favorite came from a lady who identified herself as a "concerned citizen". She wanted to know "whether the Sitting Judges favored "condoms in the schools" and/or "prayer" in the schools." The answer I wanted to give was "We favor one or the other but not both". I did however resist that temptation.

My point is very simple. It is that even though the history and examples cited are anecdotal, they illustrate that at best judicial contested elections distract and at worst they destroy the effort to secure a diverse and qualified judiciary.

Others, particularly, the Maryland State Bar Association, in recently reaffirming its opposition to contested judicial elections set forth the well established reasons for opposing judicial elections. They need not be reported here in this space.

The arguments by the proponents of contested judicial elections are also familiar. To respond to a few—Yes, we have on occasion elected qualified men and women to the Circuit Court. That is not an argument for a system which focuses on irrelevant or even silly issues instead of what is important in selecting judges. Yes, there are plenty of applicants for circuit court judgeships even with a system of contested elections. But the quantity of applicants is not the issue. Quality is the issue and even if the quality is good it would be even better if contested elections were eliminated.

Finally, the pressure of contested elections has historically leveraged more appointments of minorities to Circuit Court Bench. Well they certainly don't do that now! As Rachel McGuckian, Former Chair of the MSBA's Litigation Section and Co-Chair of the Judicial Appointments Committee successfully pointed and "In the past decade, of the five sitting judges who lost elections, three were African American males, one was an African American female and one was a Caucasian male. All five of the lawyers who successfully replaced those sitting judges were Caucasian, four male and one female.

Maryland deserves the best judges available who can best be held accountable by Retention elections run on their record on whether they have demonstrated the qualities we all agree are important in a judge. Reform of the system is long overdue and time is of the essence.