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**TO:** Members of the House Judiciary Committee

**FROM:** Katharine Kelly Howard  
Past President, Maryland State Bar Association

**DATE:** February 26, 2020

**SUBJECT:** **House Bill 1038 – Circuit Court Judges – Retention Elections**  
**House Bill 1402 – Circuit Court Judges – Selection and Tenure**

**POSITION:** **HB 1038 - Support**  
**HB 1402 – Support with Amendments**

The Maryland State Bar Association (MSBA) supports **House Bill 1038 and House Bill 1402, with amendments (removing 80% Senate confirmation provisions), which would abolish Maryland’s current contested election method of selecting circuit court judges.** Each bill proposes an amendment to the Maryland Constitution to alter the method of selection and tenure of circuit court judges from a contested election process to a merit-based system of judicial selection.

For over 30 years, the MSBA has opposed the contested election of Maryland’s circuit court judges on ethical, political, campaign, judicial independence and monetary grounds. We believe that partisan, electoral politics should be removed from Maryland’s judicial selection process. We fear that these elections inadvertently transform judges into politicians and push them into the fray of partisan politics. This contradicts judicial ethics, threatens the independence and impartiality of Maryland’s Judiciary and erodes the public’s trust and confidence in our legal system.

Contested elections subject a sitting judge to partisan politics and force him or her to campaign and raise funds to retain a seat on the bench. Considerable expense accompanies contested elections, as sitting judges must raise money, advertise, make public appearances and actively campaign for votes. Campaigning costs sitting judges time which, given heavy court dockets, is at a premium. Campaigns also costs money and can compromise a judge’s impartiality, by virtue of interacting with voters they meet on the campaign trail who express their desires as to how lawbreakers should be dealt with from the bench.

Additionally, contested elections pose ethical dilemmas for sitting judges. Judicial Canons prohibit sitting judges from directly soliciting campaign funds, although their non-judicial opponents do not operate under these restrictions. In addition, attorneys who appear before judges in their courtrooms may contribute to the campaign, creating the appearance of and casting shadows of impropriety. Overall, contested elections present the potential for conflicts of interest.

Many qualified attorneys are discouraged from seeking a judicial seat because of contested elections, narrowing the pool of judicial candidates. The expense associated with campaigning, the time investment and the possibility of losing one's seat to a contender are all major deterrents. Attorneys who accept an appointment to the bench also give up their clients or jobs.

Often the public does not know which candidates are sitting judges and vote for circuit court judges on the basis of alphabetical order and party affiliation rather than judicial qualifications. Unfortunately, post-election polls have indicated that party labels and ballot positions have become more significant than judicial qualifications, an undesirable basis upon which to select circuit court judges.

### **Merit Selection of Judges**

MSBA supports the merit selection of judges. House Bills 518 and 11 (with amendments) provide for a retention election process for circuit court judges, who after gubernatorial appointment and Senate confirmation would serve 15-year terms before standing for retention election to keep their seats on the bench. MSBA believes this process would preserve judicial accountability and ensure the most qualified jurists serve on Maryland's bench.

This selection processes embodied in HB 1038 and HB 1402, with amendments, places the most qualified judges on Maryland's bench. Sitting judges have successfully completed a rigorous interview, evaluation and selection process. Their skills, judicial temperament and qualifications have been demonstrated to the Trial Court Judicial Nominating Commission. Many have also been evaluated by local, specialty and state bar associations. Challengers often have not been through this process or have, on occasions, received negative ratings from the Nominating Commission. Voters, generally, are unaware of the judicial candidate vetting process.

Marylanders are indeed fortunate to have judges with the highest quality of character, integrity, judicial temperament and learning on Maryland's Circuit Courts. These sitting judges are well respected, and of the highest caliber; they have earned the confidence, respect and support of the public and the Bar. To



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preserve Maryland's tradition of judicial excellence, the **MSBA strongly supports the principles of merit selection of circuit court judges embodied in House Bill 1038, and in House Bill 1402 (with amendments), and urges a favorable Committee report** on whichever of the bills the Committee deems the most appropriate judicial selection process for Maryland.

Should you have any questions or need additional information, please contact Richard Montgomery, MSBA Director of Legislative Relations at (410) 269-6464 or at [richard@msba.org](mailto:richard@msba.org).