



Maryland Association for Justice, Inc.

2021 Position Paper

MAJ Position In Support of HB35 “Judges – Selection and Retention” and HB447 “Judges - Selection, Election, Tenure, and Continuance in Office”

Both HB35 and HB447 establish “retention elections” for circuit court judges comparable to the appellate judges’ retention elections. Some differences: HB35–12 year term. HB447–14 year term.

Ethical Considerations. Judge candidates raise money from lawyers who appear before the judge-candidate which might be perceived as a conflict of interest or favoritism for contributors. Non-judge candidates have no direct ethical fundraising restraints. Attached is a summary of some amounts raised by judicial election candidates (from Maryland filed finance reports). \$200,000-\$400,000 must be raised.

Judge Elections Differ from Other Elections. 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 plan these steps.

Discourages Highly Qualified Applicants. The current process discourages successful lawyers from seeking appointment and abandoning practice because he or she may lose in the election.

Quality and Vetting Process. The judicial application includes a lengthy application, interviews by up to 14 different law related interest groups such as the County Bar Association, Maryland State Bar Association, Women’s Bar Association, etc. Interviews conclude with the County judicial nominating commission that nominates at least three applicants to the Governor. Any lawyer who files to run in the election does not go through this evaluation. Voters seldom know or understand the application or vetting process to select the appointed judge. On the ballot, there is no indication of who is an “incumbent” or sitting judge versus a challenger.

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. Where there are checks and balances between the Executive and Legislative government branches, judges have largely unlimited power to render decisions affecting people.

Confusion, NOT Non-Partisan. Judicial candidates are designated “judicial” party and not Democrat or Republican. In campaigning, people often ask judicial candidates for their party affiliation. An appointed judge might be considered unethical to identify as one or the other. A challenger, however, is not restricted from answering that question. Notwithstanding the designation “judicial” party, the judicial election is PARTISAN and NOT non-partisan according to *Suessmann v. Lamone*, 383 Md. 697, 729, 862 A.2d 1, 19 (2004) (“... judicial elections for the circuit courts, ... remain, despite appellants assertions to the contrary, partisan affairs.”).

Retention Election Makes Sense. Changing to a retention election avoids almost all the above issues. No substantial money must be raised. 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 (as those above) would no longer exist since there would be limited fundraising or comments about other candidates. Public misunderstanding would be eliminated without a contested partisan judicial election. A greater number of highly qualified lawyers would likely seek judicial appointment and abandon successful law practices since the chance of losing that appointment in a judicial election would be substantially eliminated.

Retention elections acknowledge that the selection process leads to judges independently deemed qualified. The MAJ requests a **FAVORABLE** Committee Report.