

MARYLAND ALLIANCE FOR JUSTICE REFORM

Working to end unnecessary incarceration and build strong, safe communities



Retention Elections - A Plan for Fairer Maryland Trial Judges

As John Roberts, Chief Justice of the U.S. Supreme Court, has written, “Judges are not politicians, even when they come to the bench by way of the ballot.” *Williams-Yulee v. The Florida Bar* (2015).

A judge should decide each case based on the facts and the law, not on political donors’ benefits or possible loss of popularity with voters. Both empirical studies and personal accounts from judges show the real danger of political influence.

Research suggests that judges tend to decide cases in accord with the political preferences of whoever is deciding their fate—whether voters, the governor, or the legislature.

Under Maryland’s current contested election system for our Circuit, or highest trial court, judges often attract big money into their election campaigns. *Baltimore Sun*, 12/21/22. The ABA reports that, “Between 2000 and 2009, 20 of the 22 states that use contested elections to choose their supreme courts set spending records.” One result of this trend is “an increase in conflicts of interest for judges, with judges routinely hearing cases involving major campaign spenders,” such as big law firms that often appear before them.

Does it make a difference? As one retired judge has expressed it, “It’s pretty hard in big-money races not to take care of your friends. It’s very hard not to dance with the one who brung you.” *Id.*

Data on criminal cases is particularly troubling. Numerous studies have found that as judges approach reelection, they impose longer sentences on criminal defendants and are more likely to affirm death sentences. *ABA Journal*, 3/1/16. If you or your loved ones must face a sentencing court, you should be assured that the decision will be related to your actions and background, not to election campaign advertisements.

Generations ago, African-Americans rightly saw judicial contested elections as a way to integrate the judges sitting on the bench. It worked that way in Baltimore City. However, in more recent years, the bench has become fully integrated and the elections have had the opposite impact: In Anne Arundel County and Baltimore County, voters replaced well-qualified African-American appointees to the bench with white judges who promised to be tough on crime – and who had big campaign advertising budgets.

Finally, it is well-known that judges’ election campaigns rarely discuss the actual qualifications of candidates to be judges. See “Why on Earth do we elect judges?,” *Montgomery Perspective*, 11/30/20.

How would a better system work? This year, Delegate Jon Cardin in HB48 has offered a very workable plan – in effect, the same plan that currently operates quite successfully in Maryland for appeals court judges. Whenever a judicial vacancy occurs—with expiration of a term, death, disability or rejection by voters— the

Governor would appoint a replacement. Current law also provides a “Judicial Nominating Commission,” made up of half citizens and half lawyers, who examine applicants' qualifications, receive endorsements, interview applicants, and recommend a short list for the Governor to choose from.

HB48 would provide for voters to decide, after the appointed judges served one year, to vote in the next election to reject or to continue the judges in office. If approved by the voters, the judge would serve for 12 years before the process would begin again. All judges would be required to retire at age 70.

Maryland Alliance for Justice Reform strongly urges legislators to approve HB48 and so take the politics out of sentencing in our state trial courts.

-Phil Caroom is a senior trial judge who served on Anne Arundel County Circuit Court. He also serves as board chair for the non-profit Maryland Alliance for Justice Reform (MAJR), chair of the Maryland Justice Reinvestment Oversight Board, and committee co-chair for the Maryland Equitable Justice Collaborative. He offers the opinions above personally and not as a representative for the courts or any other state agency.

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