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A Comment on the 1988 Maryland General Assembly's Legislative Session

By Delegate Robert L. Ehrlich, Jr.

Retention Elections for the Judiciary

The Schaefer Administration's proposal to remove Maryland's Circuit Court judges from the existing system of contested elections became one of the most controversial issues of the 1988 session.

The legislative initiative supported by the Governor and Maryland State Bar Association (H.B. 502) will replace competitive elections with retention elections. Under this proposal, voters could vote to either retain or oust a judge on the basis of his or her judicial record. The proposal is in the form of a constitutional amendment, thus the bill must be approved by a three-fifths majority of both the House of Delegates and Senate. The voters will have the final decision in the next general election.

I strongly endorse the legislative proposal put forth by the Administration. Retention elections will serve to remove circuit court judges from partisan politics and allow them to run on the basis of their judicial records rather than against competing candidates.

I begin from the premise that judges should remain above partisan politics and public policy debates; they are not politicians and are forbidden from debating policy issues by the canons of professional ethics. Accordingly, the present system of competitive elections forces judges to run campaigns without a platform and without the ability to debate issues. Is there any wonder that the public has difficulty

understanding why the judge appearing before a political club during a campaign cannot engage in a political discussion?

Article 8 of the Maryland Declaration of Rights states that the Legislative, Executive, and Judicial powers "ought to be forever separate and distinct from each other." Yet, our present system forces judges to campaign like members of the General Assembly. Moreover, Maryland's Constitution requires that our judges be selected on the basis of "integrity, wisdom, and sound legal knowledge." The passage of H.B. 502 would help assure that our judges will not be compromised by the challenges and temptation of the competitive election process.

I also believe that the independence and integrity of our judiciary can be called into question in light of the high cost of modern campaigns. Contested elections are expensive and asking judges to solicit money from the same lawyers who appear before them cast a shadow of impropriety over the entire judiciary.

Contested judicial elections also represent a substantial waste of judicial resources. Circuit court dockets are already crowded to the point where many citizens are forced to wait many months, and in some cases years before they have their day in court. As a taxpaying citizen, I would rather have our judges working on their busy dockets rather than refining their fund raising techniques.

Citizens have a right to expect high cali-

bre, highly qualified judges. Yet, fewer and fewer quality attorneys are willing to leave private practice to become judges because the process is too risky. The present system asks potential judicial candidates to take a significant diminution in income *and* to face a contested election a year or two down the road. Is there any wonder why candidates for district court judgeships far outnumber their circuit court brethren?

There is a well-held belief by some legislators that the process of a competitive election serves to act as a safeguard to the present appointment process. Some rural and conservative legislators hold this view since they fear that appointed judges will cease being responsive to their communities. It has also been suggested that competitive elections represent the best way to ensure that women and minorities are chosen for the bench. The evidence, however, is to the contrary.

A major study by the American Judicature Society revealed that no woman challenger has won a contested judicial election from 1956 to 1979. Moreover, only three black candidates won such elections in that same time frame. More recent experience in Baltimore area judicial elections bears similar results.

I submit that the best way to ensure increased judicial participation for women and minorities is to target greater representation of these groups on the various judicial nominating commissions around the

state. These commissions submit a list of recommended judicial applicants from which the Governor is required to choose a nominee for a vacancy. Expanded minority representation on these commissions may well be the better method since evidence simply does not reveal that contested elections ensure greater judicial participation by all segments of our society.

Corporate Director Liability Reform

A major Administration initiative to limit the liability of corporate directors and officers sailed through the legislature. This emergency legislation (H.B. 273) was designed to curtail the fear of lawsuits that have resulted in a number of local corporations which have been threatening to leave Maryland and reincorporate in other states. Delaware, Pennsylvania and Virginia have recently enacted similar reforms for their corporate directors. It should be noted that the protection afforded by H.B. 273 was limited solely to stockholder suits and does not include suits by third parties.

This is important legislation given the skyrocketing cost of liability insurance for corporate officers and directors. It is equally important as a signal to the business community of Maryland's renewed commitment to a stronger business climate.

Drunk Driving

A major drunk driving initiative lowers the standards for DWI/DUI in Maryland. Maryland's blood alcohol level for driving while intoxicated was the second highest in the nation at .13 - a level exceeded only by Colorado at .15 percent. Passage of H.B. 1330 will lower the standard for DWI from 1.3 to 1.0 and DUI from .8 to .7. Moreover, the level at which one is presumed to be driving without alcohol related impairment has been lowered from .05 to .04.

Another innovative approach to the problem of drunk driving is the ignition interlock system. Passage of H.B. 107 allows judges to order the installation of such a system in the car of a drunken driver. The interlock device prevents an ignition from starting until the driver blows into a breath analyzer. If alcohol is detected, the car will not start for up to 40 minutes. The system is calibrated with the person's breath imprint to prevent someone else from blowing into the machine. This device is another tool to protect the public from drunk drivers while allowing those same persons to work and support their families.

Vehicle Emissions

The Maryland Vehicle Emissions Pro-

gram was established in 1984 in order to comply with the requirements of the Federal Clean Air Act. The present program is scheduled to expire on December 31, 1988. Accordingly, the Administration introduced legislation to continue VEIP as a centralized system on a biennial basis. The program includes a three point anti-tampering check conducted at the time of the emissions test and a six point anti-tampering check at the time of change of ownership.

I supported the continuation of this program on a centralized basis with biennial inspections. There is little doubt that VEIP can be inconvenient and at times costly. The fact remains, however, that our air quality has undergone significant improvement since the implementation of this program in 1984. The price we pay is worth the environmental benefits we all enjoy.

Child Abuse

Child abuse is a major social problem due to its high frequency of occurrence and overall impact on the child victim and his/her family. The impact of current criminal justice procedures frequently serves to exacerbate the degree of emotional distress experienced by many child victims.

The passage of a bill to allow the admission of out-of-court statements by a child victim is an important step in lessening the trauma many children experience in the frightening atmosphere of a courtroom. Accordingly, House Bill 1018 and Senate Bill 66 were passed by a legislature more willing to accommodate the legitimate demands of victimized children while balancing the constitutional rights of criminal defendants.

This legislation is designed to admit into evidence valuable statements made to certain professionals by child victims, under the age of twelve, concerning sexual offenses when those children are unable to testify in court. The bill requires that corroborative evidence of the offense be present and that the statement possess particularized guarantees of trustworthiness.

At present, twenty-seven states have adopted statutes allowing hearsay testimony into evidence in order to minimize the traumatic impact of the courtroom proceeding on children. Passage of H.B. 1018 /S.B. 66 keeps Maryland in line with the national trend of legislation to overcome prosecutorial disadvantages in cases of child sexual abuse.

Hand Gun Control

In a last minute decision, the General Assembly passed the new gun control bill.

This law proscribes both the sale and manufacture of certain handguns known as 'Saturday Night Specials.' Originating as House Bill 1131 and Senate Bill 484, the final product was a result of much compromise and amendment.

Initially H.B. 1131 was proposed to outlaw the Saturday Night Special. Senate Bill 484 was added to H.B. 1131. The amendment overturned the decision of *Kelly v. R. G. Industries, Inc.*, 304 Md. 124, 497 A.2d 1143 (1985), which held that a handgun manufacturer or marketer may be held liable for gunshot injuries resulting from the use of one of its handguns in the commission of a crime. Thus, the ultimate result of the compromise is a state wide ban on the manufacture and sale of these handguns as well as relief from product liability for injury resulting from use of the weapons in the commission of a crime.

What constitutes a 'Saturday Night Special' will be determined by a nine person commission which will evaluate these weapons and create a roster of the proscribed weapons. Criteria which the group will use to evaluate a handgun include: concealability, ballistic accuracy, weight, quality of manufacture and material used to manufacture the gun, safety, caliber, detectability by security devices and, utility for illegal use or sporting activity.

The Honorable Robert Ehrlich, Jr., is a member of the Maryland House of Delegates. A representative from Baltimore County's Tenth Legislative District, Delegate Ehrlich is a member of the House Judiciary Committee. He completed his undergraduate education at Princeton University and earned his Juris Doctorate at Wake Forest University. In addition to his position in the House, Delegate Ehrlich is associated with the law firm of Ober, Kaler, Grimes & Shriver.

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