

2016
Report of the
Ballot Questions Advisory Committee
of the
Montgomery County Democratic Party

as submitted to the
Precinct Organization of the Montgomery County Democratic Party
and the Montgomery County Democratic Central Committee

September 8, 2016

Introduction

In July 2016, in accordance with § E(2)(d) of the Precinct Organization Rules, the Montgomery County Democratic Central Committee established the 2016 Ballot Questions Advisory Committee. In July volunteers were solicited to serve on the Advisory Committee by a blast e-mail to approximately 3,500 active Democrats (including precinct officials, elected officials, former elected officials, donors and others) and on the Montgomery County Democratic Party's Website. After applications were received, the Central Committee appointed the membership of the Advisory Committee:

Alan Banov, Chair (D18)
Eliot Chabot (D19)
Harold Diamond (D19)
Avis Driver (D39)
Eliot Greenwald (D16)
Jennifer Hosey (D17)
Marlin Jenkins (D20)
Pat Levee (D15)
Dee Schofield (D18)

Starting on August 23, 2016, MCDCC began to advise the precinct organization and the public about the September 7th hearing, using the same e-mail blast system mentioned above. On August 29th MCDCC reminded the precinct organization and the public about the September 7th hearing.

On September 7, 2016, the Advisory Committee conducted a public hearing on the ballot questions at the Montgomery County Education Association headquarters in Rockville. (The hearing was announced in the September issue of *The Montgomery Democrat*, on the Montgomery County Democratic Party's Website, and by e-mail.) There were two speakers for Question 1; the Montgomery County Young Democrats submitted a written statement in favor of it. There were two speakers in favor of Question A. Three speakers spoke against Question B, and we allowed Robin Ficker, who started the petition on that question to speak in favor of it, even though it was a Democratic hearing and he did not sign up to speak in advance. The Montgomery County Young Democrats submitted a written statement against Question B. Three speakers spoke in favor of Question C; we allowed Mr. Ficker to speak against it.

The information in this report is based on research by the Advisory Committee and additional information received at the public hearing. In accordance with MCDCC Rules, the Advisory Committee is not making recommendations on how the Precinct Organization or MCDCC should vote with respect to the ballot questions.

On September 22, 2016, the Precinct Organization will meet to review these recommendations and adopt its positions on the ballot questions. The Precinct Organization members will be asked if MCDCC should support a given question, oppose it, or take no position. At the conclusion of the Precinct Organization meeting, the Central Committee will meet to adopt its positions on the ballot questions. For each ballot issue the Central Committee will be asked if it agrees with the Precinct Organization. If so, MCDCC will adopt the Precinct Organization position. If not, MCDCC will take no position at all.

Question A: Providing for Special Elections for Filling a Vacancy in Office of County Executive

Charter amendment by act of County Council

County Executive Vacancy -Special Election

Concise Summary: Question A, if passed, would amend Section 205 of the County Charter to recognize that under State law, the County Council may provide for a special election to fill a vacancy in the office of County Executive. The County Charter Amendment mirrors the same Charter language that currently provides for special elections to fill vacancies in the office of County Council Members.

Proposed Change (proposed new language is underlined):

Sec. 205. Vacancy. A vacancy in the office of County Executive shall exist upon the death, resignation, disqualification, or removal of the County Executive. Unless the Council has provided by law for filling a vacancy by special election, the following process for filling a vacancy shall apply. [The] When a vacancy has occurred, the Council, by a vote of not less than five members, shall appoint a successor to fill the vacancy within forty-five days of the vacancy.

Ballot Question:

Amend Section 205 of the County Charter to recognize that under State law the County Council may provide for a special election to fill a vacancy in the office of County Executive.

Background:

Under our current County Law, a vacancy in a Council seat occurring earlier than December 1st of the year before the next quadrennial General Election must be filled by a special election. By contrast, under current law, the only option for replacing a County Executive mid-term is appointment by the County Council. When the Charter was amended to allow for special elections in the event of Council Member vacancies, the office of County Executive was not included. This amendment would make the replacement procedures the same for the two offices.

This change requires an amendment to the Charter; hence, its presence on the General Election ballot.

When it is necessary to amend the Charter, a bipartisan, 11-member Charter Review Commission studies and makes recommendations on potential Charter amendments. The Commission researches and evaluates Charter issues raised by the Executive, Council Members, other government officials, and the public. (In the case of Question A, the issue was raised initially by the County Council.) The Commission followed this research and recommendation process for Question A, and issued a public report in May 2016. The Commission recommended that the Montgomery County Charter be amended to allow for special elections to fill vacancies in the office of County Executive. Here is the link to the Charter Review Commission Report, which recommended this measure:

<http://www.montgomerycountymd.gov/crc/Resources/Files/ReportCRC2016.pdf>

Reasons to Support Question A:

- Election by the voters is a fundamental maxim of democratic government, and it is particularly appropriate when electing the single head of the Executive Department serving an extended term.
- Election of the County Executive by the voters, rather than by appointment of the County Council, is necessary to insure both the essential separation and the appropriate balance of powers between the Legislative and Executive arms of the County Government and, in particular, the selection of an independent County Executive.
- Although turnout in past special elections for individual County Council members has been lower than regular elections, the special election turnout for a County Executive probably would exceed turnout for a special election of a Council member. The special election of the chief executive would be county-wide, and would command greater public attention.
- The Council, which initiated this amendment, should have the power to provide for filling a County Executive vacancy by voter election in such manner and circumstances as each may determine.
- The Amendment was initiated by a unanimous request of the County Council.
- The independent Charter Review Commission recommends its passage.

Reasons to Oppose Question A:

- The costs (one to two million dollars) and possible disruptions of holding a County-wide special primary and a special general election to fill a single office are substantial and disproportionate to the purported benefits, particularly in light of the low voter turnout in special elections. The turnouts for the 2008 and 2009 Special Elections to fill a District 4

Council vacancy hovered around 10%. Specifically, the 2008 turnout for the Primary was 11.47% and the General was 8.09%, while the corresponding figures for the 2009 Special Election were Primary-8.9% and General-10.14%. Source is at
<http://www.montgomerycountymd.gov/Elections/PastElections/PastResults.html>

- Effective governance requires that a vacancy in the County Executive be speedily filled, and this is achieved through prompt Council appointment, rather than by an extended and distracting Special Primary and Special General Election.
- A County Council is better equipped than the likely number of participating voters to decide who best is qualified to serve as County Executive.
- Since 2012, State Election law has authorized Counties to use mail ballots to fill County Council vacancies, but our Council has yet to amend the County Election Law to so provide. Mail ballots would be less expensive. The enabling bill's Fiscal Effect Note states that the cost to the County to hold a special primary and special general election in a large county may be over \$1 million, but the cost could be much higher.

Question B: County Executive and County Council Term Limits

Charter amendment by Petition

Concise Summary: The ballot question proposes an amendment to the County Charter, based on a petition circulated by Robin Ficker, which would limit terms of the County Executive and County Council Members, including incumbents in those positions, to three terms, whether they were elected to three full terms or initially served a partial term before serving two full terms.

Ballot Question:

Amend Sections 105 and 202 of the County charter to:

--limit the County Executive and members of the County Council to three (3) consecutive terms in office;

--provide that a County Executive and any member of the County Council who will have served three (3) or more consecutive terms on December 3, 2018, cannot service another successive term in the same office; and

--provide that service of a term includes complete service of a full term and partial service of a full term.

Proposed Changes (proposed new language approved by County Council is underlined):

Sec. 105. Term of Office

Members of the Council shall hold office for a term beginning at noon on the first Monday of December next following the regular election for the Council and ending at noon on the first Monday of December in the fourth year thereafter. In no case shall a Council Member be permitted to serve more than three consecutive terms. Any Member of Council who will have served three or more consecutive terms at noon on the first Monday of December 2018 shall be prohibited from commencing to serve a successive term of office at that time. For purposes of this Section, service of term includes complete service of full term and partial service of full term.

Sec. 202. Election and Term of Office

The County Executive shall be elected by the qualified voters of the entire County at the same time as the Council and shall serve for a term of office commencing at noon on the first Monday of December next following the election, and ending at noon on the first Monday of December in the fourth year thereafter, or until a successor shall have qualified. In no case shall a County Executive be permitted to serve more than three consecutive terms. Any County Executive who will have served three or more consecutive terms at noon on the first Monday of December 2018 shall be prohibited from commencing to serve a successive term of office at that time. For purposes of this Section, service of a term includes complete service of a full term and partial service of a full term.

Background:

Term limit ballot questions are not new to Montgomery County. The Maryland Constitution provides that citizens who wish to place proposed amendments to a County Charter on the ballot may do so if they collect at least 10,000 signatures.¹ Former Maryland Republican Delegate Robin Ficker successfully gathered enough signatures to place term limits referenda on the ballots in 2000 and 2004.² In both instances the ballot initiatives failed, obtaining only 46 percent of the vote in 2000 and 48.6 percent of the vote in 2004.³

Mr. Ficker is also the primary proponent of 2016 Ballot Question B. If this ballot question passes, all current and future County Council Members and County Executives will be limited to

¹ Maryland Constitution, Article XI-A, Section 5.

² GOP Activist Says Term Limit Question ‘A Virtual Certainty’ on the November Ballot: Robin Ficker’s petition asks voters whether county officials should be limited to three consecutive for year terms, by Aaron Kraut, Bethesda Magazine. <http://www.bethesdamagazine.com/Bethesda-Beat/Web-2016/GOP-Activist-Says-Term-Limit-Question-A-Virtual-Certainty-on-November-Ballot/>

³ *Id.*

3 terms. Under this amendment, any time served in either office would be considered a full term. The coverage of partial terms versus a full term is addressed in Question C.

Reasons to support Question B:

- Term limits are not a new concept. The President of the United States is limited to two (2) four year terms.⁴
- Presently thirty-six (36) states, including Maryland, have term limits for Governors. Additionally, 15 states other than Maryland have term limits for their state legislators.⁵
- Terms limits will create a sense of urgency because elected officials will have only a specified amount of time to accomplish their agendas. Currently, lawmakers may view the work as a career and not a temporary assignment, thus spending most of their time posturing for re-election. Their primary focus becomes running for office and not the people they have been elected to serve.
- Proponents assert that term limits will result in more meaningful elections and increase voter turnout.
- Proponents assert that term limits will lead to a more diverse pool of candidates, which could lead to more diversity among electeds.
- The County's recent implementation of campaign public financing, coupled with term limits, will provide more opportunities for qualified citizens to pursue elected office.
- Term limits will limit the influence of special interest groups.
- Fresh ideas from newly elected officials give the community a chance to experience a different path forward.
- Proponents assert that term limits would encourage our elected officials to implement policies and legislation to benefit the community.

⁴ Section 1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this article shall not apply to any person holding the office of President when this article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this article becomes operative from holding the office of President or acting as President during the remainder of such term. Section 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several states within seven years from the date of its submission to the states by the Congress.

⁵ Report about the Proposal for Term Limits in Montgomery County, by Paul M. Bessel and Barbara Braswell, pp. 45-46 (Aug. 23, 2016); *Term Limits in State Legislatures*, Chapter 1, Pages 10–21, authored by Fennie Drage Bowser and Gary Moncrief (2007) (14 in 2007).

Reasons to oppose Question B:

President John Adams once stated: “There is no right clearer ... than that the people should be at liberty to choose the ablest and best men ... yet, upon the present [term limits] supposition, the people voluntarily resign this right, and shackle their own choice.”⁶

- “We already have term limits – they are called elections.”⁷ Term limits interfere with the fundamental right of voters to elect their representatives.⁸ Voting gives citizens the opportunity to vote out the incumbent if they feel the incumbent is not performing adequately.
- Voting tends to validate effective service, if the residents vote for an incumbent to remain.
- Term limits will systemically remove institutional knowledge; they guarantee an inexperienced legislature, which tends to reduce the Council Members’ ability to represent their constituents well.
- The power of incumbency is not overwhelming for seats on the Montgomery County Council and the office of the County Executive. Examples of incumbents losing elections include the following: County Executive Sidney Kramer in the 1990 primary, Council Member Bill Hanna in the 1998 primary, Nancy Dacek in the 2002 general election, Blair Ewing in the 2002 primary election, Michael Subin in the 2006 primary election, Howard Denis in the 2006 general election, and Duchy Trachtenberg in the 2010 primary election.⁹
- If term limits are enacted, the public will be forced to remove effective elected officials. It would not benefit the County to limit access and progress if the current Members are doing a stellar job.
- Scholarly articles and evidence point out that term limits do not lower spending and taxes; nor do they prevent salary increases for incumbents.¹⁰
- Scholars have found that term limits do not lead to new people with new ideas coming into government or more competition for office.¹¹
- Scholars have found that term limits do not lead to greater diversity; women and minorities generally are not elected to the same degree under term limits.¹²
- Scholars have found that term limits do not increase voter turnout in elections.¹³

⁶ *Defense of the Constitutions of the United States of America* (1787). See <http://masscases.com/cases/sjc/413/413mass1201.html#foot9>

⁷ Report about the Proposal for Term Limits in Montgomery County, by Paul M. Bessel and Barbara Braswell.

⁸ *Id.*

⁹ Turque, Bill, Washington Post. November 25, 2015, “In Maryland’s Most Populous County, Could Term Limits Finally Win?”, and Peck, Louis, “2014 Endorsements: Candidates for County Executive, County Council: A look at how leading groups have come down in county-level contests,” *Bethesda Magazine*, June 12, 2014.

¹⁰ Report about the Proposal for Term Limits in Montgomery County, by Paul M. Bessel and Barbara Braswell (Aug. 23, 2016)

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* , p. 4 (“Detailed studies of the facts, based on data from California state legislative races from

- Question B, as presented, may potentially lead to immediate litigation because it would apply retroactively to incumbent Council Members and the County Executive. Article 1, Section 10 of the U.S. Constitution may prohibit retroactive application of the amendment: “No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, **ex post facto Law**, or Law impairing the Obligation of Contracts, or grant any Title of Nobility” (emphasis added). As worded, the amendment would be retroactive and apply to Council Members who have already served 3 terms. By contrast, the 22nd Amendment to the U.S. Constitution provides in pertinent part: “But this article shall not apply to any person holding the office of President when this article was proposed by the Congress, and shall not prevent any person who may be holding the office of President,” “[A]n important interest group, U.S. Term Limits, opposes retroactivity, arguing that none of the states' limits laws are retroactive.”¹⁴ According to U.S. Term Limits, 15 states have enacted term limits, and only one (Maine) made the law retroactive.¹⁵
- Under our current system, without term limits, our county is thriving and favorable for many.
 - Montgomery County Schools are rated amongst the best in the nation.
 - Development continues to expand.
 - According to the recent report from the Maryland Manual, the employment rate for Montgomery County as of June 2016 is to 4.3%. Bureau of Labor Statistics reports the National average to be 4.9%.
 - It appears the County is going in the right direction.
- Majorities of voters in the County have already rejected term limits twice. In 2000, 54% of the voters voted against a term limit measure, and in 2004, 51.4% voted against one.
- Robin Ficker, a Republican activist who has often run for County Council without success, initiated the petition. He apparently is trying to create more opportunities for Republican candidates and thus is directly attacking current Democratic Council Members when he cannot defeat them in elections.
- Active supporters of the term limit question include Help Save Maryland. Help Save Maryland is a political organization run by right-wing activist Brad Botwin. The Anti-Defamation League (ADL) and Southern Poverty Law Center have identified Help Save

1976 to 2004 – 28 years – shows that legislative term limits not only fail to achieve the reformers' goals, but they, in fact, decrease voter turnout... quite unexpectedly, I find that term limits actually reduce voter participation in elections.”).

¹⁴ *H. Rept. 104-67*, <https://www.congress.gov/congressional-report/104th-congress/house-report/67/1> (retrieved on Aug. 30, 2016).

¹⁵ <https://www.termlimits.org/term-limits/state-term-limits/state-legislative-term-limits/> (retrieved on Aug. 30, 2016).

Maryland as an extremist, nativist, and anti-immigrant group.¹⁶ Mr. Botwin was quoted in the *Washington Post* as saying his group collected “hundreds” of signatures for this initiative.¹⁷

- Although Question B seeks to limit office-holders to “three terms,” at the September 7th hearing Mr. Ficker repeatedly said that Question B was designed to limit the County Executive and Council Members to “12 years.” This contradicted his objection to Question C, which is designed to exclude from Question B an office-holder whose first term was a partial term of less than two years and whose total years would be only 10.
- This ballot question fails to differentiate between the offices to which Montgomery Council Members are elected. Council Members are elected by District for five seats and at-large for four other seats. Should Council Members be prohibited from serving as a District Representative and then at large or vice versa?
- Term limits will not solve the purported issues with County taxes. If the issues are with taxes, then simply suggest legislation or ballot questions that address tax issues. Historically, tax related ballot questions have been successful.
- People in states with term limits, even some who advocated them earlier are unhappy with them.¹⁸

Reasons for No Position

- Term limits are a non-partisan issue. This ballot question is not about party affiliation. If term limits are enacted they will affect all. This ballot question is a philosophical question posed directly to the voters and gives them the opportunity to decide whether they are in favor of term limits.
- The Democratic Party’s decision to support or oppose a ballot question should be based upon the merits of the ballot question posed and not the actual politicians involved in the issue. In this instance, our judgment maybe clouded by the individual advocating for the ballot question and individuals that may be effective if term limits are enacted.
- Major pillars in the Montgomery County Democratic party are at odds on the issue. A decision to support or oppose, term limits could be divisive amongst the local county Democratic Party. Various current Montgomery County Council Members have expressed their opposition to the implementation of term limits. UFCW Local 1994 (MCGEO), a union local that is active in local Democratic Party politics, has not taken a formal position to support or oppose the ballot question on term limits. However, MCGEO representatives have

¹⁶ <https://www.splcenter.org/fighting-hate/intelligence-report/2016/active-nativist-extremist-groups-united-states> (retrieved on Sept. 7, 2016).

¹⁷ https://www.washingtonpost.com/local-md-politics/hundreds-of-term-limits-signatures-gathered-by-head-of-anti-immigrant-group/2016/08/09/b462c374-5e51-11e6-8e45-477372e89d78_story.html (retrieved on Sept. 7).

¹⁸ Report about the Proposal for Term Limits in Montgomery County, by Paul M. Bessel and Barbara Braswell, pp. 4-5 (Aug. 1, 2016)

definitely expressed displeasure for current Montgomery County Council Members for recent budget decisions they made that affected county employees pay.

- Thus, if the Democratic Party takes a stand on this controversial issue, it may prevent the party from coming together and moving forward at this critical time.

Question C: Defining a Term for Purposes of Term Limits

Charter amendment by act of County Council

Term of Office -County Council and County Executive -

Partial Service of a Full Term

Amend Sections 105 and 202 of the County Charter to provide that partial service of a full term for either a Council Member or the County Executive means service of more than two years of a term

Concise Summary: To clarify the meaning of “partial service of a full term” in the proposed amendment to Sections 105 and 202, Question C would provide that the limit would apply only to a person who has served 2 years or more of a term.

Background: County Council, seeing the likelihood that Question B would be on the ballot and to reduce its impact on current office-holders, proposed that office-holders who had been appointed or elected in a special election and had not served three full terms would be exempt from the term limit. The Council staff modeled this bill based on Section 1 of the 22nd Amendment to the U.S. Constitution, which reads:

Section 1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, *for more than two years of a term to which some other person was elected President* shall be elected to the office of the President more than once. But this Article shall not apply to any person holding the office of President when this Article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term. (emphasis supplied)

This report explains Resolution 18-590, which placed Question C on the ballot:

http://montgomerycountymd.granicus.com/MetaViewer.php?view_id=136&clip_id=12062&meta_id=125278

Reasons to Support Question C:

- A Council Member who has been elected or appointed to fill someone else's term, even if that person only served for a day, would have that counted against him or her for term limit purposes
- The 22nd Amendment to the U.S. Constitution limits presidents to 2 terms, and in the case of someone who has succeeded to that office such as a vice president, this limitation applies only to a person if he or she has served 2 years or more (50%) of a term.
- This amendment would cure one of the problems caused by Question B, *i.e.*, prohibiting Council Members who have served a partial term among their three terms from serving after the third term ends
- "Although 'term' is defined in the affected sections as 'beginning at noon on the first Monday of December next following the regular election for the Council and ending at noon on the first Monday of December in the fourth year thereafter,' the phrases 'partial service' and 'full term' are not defined." (Memorandum to County Council from Robert H. Drummer and Josh Hamlin, July 19, 2016)
- If Question B passes, it could discourage the most capable and committed members of the community from accepting an appointment to finish an unexpired term or seeking the position in a special election, thus reducing the number of choices for the electorate
- If Question B passes and Question C does not, the courts may have to decide what a "term" is for purposes of the term limits amendment
- Paul Bessel, who has very thoroughly researched term limits, reports that he never found a single instance where anything less than half a term is considered a term for term limit purposes. He writes: "[O]ther counties in Maryland and jurisdictions throughout the country that have term limits almost always define partial terms as at least half the remaining term, and sometimes say that partial terms should be completely ignored for purposes of calculating how many terms someone has served."
- The question was proposed by a unanimous vote of County Council.
- Although Question B seeks to limit office-holders to "three terms," at the September 7th hearing Mr. Ficker repeatedly said that Question B was designed to limit the County Executive and Council Members to "12 years." This contradicted his objection to Question C, which is designed to exclude from Question B an office-holder whose first term was a partial term of less than two years and whose total years would be only 10.

Reasons to Oppose Question C:

- It could encourage term limit amendments.
- Robin Ficker's petition did not provide for this contingency.
- If Question B is rejected, there is little need for adopting Question C

Statewide Question 1: Appointments and Special Elections to Fill Vacancies for Attorney General and Comptroller

Concise Summary: Unifies the manner in which vacancies for U.S. Senator, Attorney General, and Comptroller are filled, involving both the appointment of a successor, and in certain circumstances, special elections to be held concurrently with regularly scheduled elections for voters to elect a successor. Nominations to the Governor will be made by State Central Committees.

Ballot Question:

Constitutional Amendment (Ch. 511 of the 2016 Legislative Session) Appointments and Special Elections for Attorney General or Comptroller

Changes the way the Governor fills a vacancy of the Attorney General or the Comptroller and requires a special election for vacancies that occur on or before a certain date. Under current law, the Governor fills a vacancy by appointing an individual to serve for the remainder of the term. Under the amended law, if the vacating Attorney General or Comptroller was a member of a political party, the Governor must fill the vacancy from a list of three names provided by the political party of the vacating official, and if no names are provided by the political party within a set time period, the Governor must then select a successor from the political party of the vacating official. If the vacating Attorney General or Comptroller was not a member of a political party, then the amended law requires the Governor to appoint any qualified individual. The Governor must make the appointment within a set time period following the vacancy. The amended law requires a special election to replace the successor if the vacancy occurs early enough in the term to allow for candidates to participate in the regular elections held in the second year of the vacating official's term.

(Amending Article V, Section 5 and Article VI, Section 1 the Maryland Constitution)

Background:

The amendment originated in a bill, HB260, which Delegate David Moon (D-20) introduced. Here is the link to the fiscal note for the bill, which the Maryland Department of Legislative Services prepared: http://mgaleg.maryland.gov/2016RS/fnotes/bil_0000/hb0260.pdf

In the interest of space, the ballot question itself provides a brief overview of the proposed constitutional amendment. The amendment would make uniform the process for replacing the Comptroller and Attorney General with the process for replacing the U.S. Senator. The following provides additional details:

Appointment of a Replacement. In the case of a vacancy, the State Central Committee of the political party, if any, with which the vacating officeholder had been affiliated at the time of the officeholder's last election or appointment will submit a written nomination of three nominees to the Governor, within 30 days after the occurrence of the vacancy. Then the Governor must appoint one of the three individuals whose names are submitted. Each individual whose name is submitted to the Governor must have been a registered voter affiliated with the political party of the vacating officeholder on the date immediately preceding the date when the vacancy occurred.

If no names are submitted within 30 days by the State Central Committee, within 15 days thereafter the Governor must appoint any qualified individual who was a registered voter affiliated with the political party of the vacating officeholder on the date immediately preceding the date the vacancy occurred.

If the vacating officeholder was not affiliated with a political party at the time of the officeholder's last election or appointment, the Governor must appoint any qualified individual within 15 days of the occurrence of the vacancy.

Duration of Appointment. In the case of Attorney General and Comptroller vacancies, if the vacancy occurs after 21 days before the deadline for filing certificates of candidacy for the regular statewide election in the second year of the term, the appointed individual will serve the remainder of the term. If the vacancy occurs on or before 21 days before the certificate of candidacy deadline, the appointed individual serves until a successor is elected at special primary and general elections held at the same time as the statewide regular primary and general elections in the second year of the term, which is the same election cycle as the presidential election cycle.

The ballot question would not change the existing statute in regard to the duration of appointment in the case of a U.S. Senator vacancy. If the vacancy occurs after 21 days before the deadline for filing certificates of candidacy for the regular statewide election in the fourth year of the term, the appointed individual serves the remainder of the term. If the vacancy occurs on or before 21 days before the certificate of candidacy deadline for the election held in the fourth year of the term, the appointed individual serves until a successor is elected at special primary and general elections held at the same time as the next statewide regular primary and general elections.

Reasons to support Question 1:

- The will of the majority of voters, to elect an individual of a particular political party, is preserved through a nominating process by the State Central Committees.¹⁹
- A uniform process of succession for all three offices improves clarity and makes the system more accessible to the voting public.

¹⁹ Maryland Election Law provides, "Each political party shall have a State central committee." Md. Election Law Code Ann. § 4-201.

- A quick nomination and appointment process ensures minimal disruption in public service by these three offices.
- A special election that is concurrent with a Presidential Election ensures maximum voter turnout.
- A special election that is concurrent with a Presidential Election ensures minimal cost to the taxpayers.
- The major political parties in Maryland are recognized as a matter of law²⁰ and have standing to nominate successors when there are vacancies in various offices. See Md. Const. art. III, § 13 (2016).
- The bill to hold a referendum on the proposed constitutional amendment had strong bipartisan support. It was overwhelmingly adopted by the legislature (89-49 in the House and 33-13 in the Senate) and signed by the Governor.
- The appointment procedure is similar to that provided in the State Constitution for filling legislative vacancies. *See* Md. Const. art. III, § 13 (2016).

Reasons to oppose Question 1:

- The Governor, who is elected statewide, should have full discretion to fill the vacancy and should not be forced to fill the position based on the political party of the person who vacated the office. Nor should the Governor be limited to three names proposed by a State Central Committee.
- State Central Committees, who are not elected in statewide elections, and are elected by voters in only one party, should not play a pivotal role in the appointment of statewide office holders.
- It is disruptive for the Governor to make a special appointment, only to hold a special election during the second year of the term. There is more continuity of office if the Governor can make the appointment for the remainder of the term, no matter how much time is left in the term of the vacated official.
- Submitting three nominations, as opposed to one, gives too much power to the Governor.
- The current system works. If it is not broken, don't fix it.

²⁰ “In Maryland, provisions for recognition of political parties by the State Board of Elections are established by law.” <http://msa.maryland.gov/msa/mdmanual/40party/html/parties.html> (retrieved Sept. 1, 2016). “As of 2015, four political parties were recognized by the State Board of Elections: the Democratic Party, the Green Party, the Libertarian Party, and the Republican Party.” *Id.*

Unnumbered Questions: Retention of Certain Judges

Background: At the General Election following the appointment of a judge to one of the several courts in the State of Maryland, the voters are given the opportunity to vote whether or not the judge should be retained on the court for a full term. At the end of each judge's term, the question is again submitted to the voters.

For the 2016 general election, the ballots for all precincts in Montgomery County will contain certain judges who have been appointed, but have not had their names voted upon as to whether or not they should be retained on the court for a full term, as well as a judge who is up for another term.

In 2001, the Montgomery County Democratic Central Committee adopted a resolution stating that it is the policy of the County Democratic Party that judges should be retained in office unless they have “demonstrated through the performance of his or her duties that such sitting Judge is not qualified to continue in office.”

Ballot Questions: We have recently received proofs of the 2016 Montgomery County ballots, showing the exact way the judges will appear. These ballots list the following three Circuit Court judges alphabetically with a box next to each judge's name and the advice, “Vote for up to 3”:

John M. Maloney, Judge, Montgomery County Circuit Court

Karla N. Smith, Judge, Montgomery County Circuit Court

Harry Storm, Judge, Montgomery County Circuit Court

The same ballot lists judges on the Court of Special Appeals individually, with a box for “Yes” and another box for “No” for each judge. The Court of Special Appeals Judges on this portion of the ballot for Montgomery County voters this year are as follows:

Dan Friedman, Judge, Court of Special Appeals At Large

Patrick L Woodward, Judge, Court of Special Appeals Appellate Circuit 07

Review: Alan Banov and Harold Diamond of the Ballot Questions Advisory Committee reviewed the disciplinary opinions of the Maryland Commission on Judicial Disabilities and researched whether any complaints were filed with the Maryland Judicial Campaign Conduct Committee about these judges. None of the five Judges listed above were among those Judges who had been the subject of a disability opinion or of a complaint filed with the Maryland Judicial Campaign Conduct Committee.

We have also requested input from the judicial selection committee of the Montgomery County Bar Association. This was done not only by referring to their websites, but also talking to knowledgeable people on their staffs. We also have reached out to the following bar

associations, for their comments or opinions on the 5 Judges listed above. We have not yet received replies. The organizations are:

1. The Asian Pacific American Bar Association of Maryland
2. Lesbian, Gay, Bisexual, and Transgender Bar Association of Maryland
3. Alliance of Black Women Attorneys of Maryland
4. Maryland Hispanic Bar Association
5. Women's Bar Association of Maryland

On September 7 the Advisory Committee conducted a public hearing, at which time speakers could speak not only on ballot issues, but also on the advisability of voting for the above-mentioned five judges. So far, the Advisory Committee has received no adverse information about any of the five judges.

Recommendations: In view of the position taken by the Montgomery County Democratic Central Committee that a judge should be retained in office unless the judge has “demonstrated through the performance of his or her duties that such sitting Judge is not qualified to continue in office” and the fact that none of the current judges on the ballot has even been the subject of any complaint, the BQAC will not give reasons for or against any of the judges (with pros and cons), but rather recommends that the Democratic Party support continuation of all five judges on the bench.

Additional Information:

Dan Friedman: Has been a member of the court of Special Appeals since September 23, 2014. Judge Friedman graduated from the University of Maryland, College Park, magna cum laude, in 1988, and he graduated from the University of Maryland School of Law with honors in 1994. He is a member of the Maryland Bar, the District of Columbia Bar, and the bar of the U.S. District Court for Maryland. Prior to being appointed to the Court of Special Appeals, he was an Assistant Attorney General and Counsel to the General Assembly in the Office of Attorney General from 2008 to 2014.

Patrick Woodward: Judge Woodward has filled the 7th Appellate Circuit (Montgomery County) seat on the Maryland Court of Special Appeals since May 2005. He had previously served on the Montgomery County Circuit Court from 1998 to 2005, and prior to that, from March 8, 1991 to May 6, 1998, he was an Associate Judge of the District Court of Maryland, District 6, Montgomery County. After graduating from a private high school in Montgomery County, Judge Woodward graduated from Princeton University in 1970 and Vanderbilt University School of Law in 1973.

John M. Maloney: He has been an Associate Judge, Montgomery County Circuit Court since January 30, 2015. Prior to that, he was Chief Deputy State's Attorney, Montgomery County from 2007 to 2015. Previously he had been an Assistant State's Attorney, Prince George's County from 1989 to 2007; between 2003 and 2007 he was chief of the homicide unit. Maloney was born in Washington, DC, in 1963. He graduated from Colgate University in 1985 and from the University of Maryland School of Law in 1988.

Karla Smith: She has been an Associate Judge on the Montgomery County Circuit Court, 6th Judicial Circuit since January 23, 2015. Previously she was an Associate Judge, District 6, Montgomery County from August 30, 2012 to January 23, 2015. She was born in Los Angeles, California, in 1969. Judge Smith graduated from the University of Maryland, College Park in 1991, and she graduated from the University of Virginia School of Law in 1995 with a J.D.

Harry Storm. He has been an Associate Judge, Montgomery County Circuit Court, 6th Judicial District since January 8, 2016. He served as an Assistant State's Attorney, Montgomery County from 1980 to 1982. Between 1982 and 2016 Judge Storm had been a member of, an associate, or principal with a number of law firms. He has been President of the Maryland State Bar Association since 2016. Judge Storm was born in Frostburg, MD, in 1954. He graduated from the University of Maryland, College Park, in 1976, and obtained a J.D, magna cum laude from the University of Baltimore School of Law in 1979.

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