

TESTIMONY BEFORE THE JUDICIARY WORKGROUP STUDYING SELECTION AND RETENTION OF JUDGES

BY: Claudia Barber, First Vice President, Anne Arundel County NAACP

November 28, 2022

The Brennan Justice Center article presented to this workgroup is not a clear indication that Maryland courts are diversified.

As Political Science Professor Todd Eberly of St. Mary's College in St. Mary's County pointed out in a recent NewsBreak article, the state's General Assembly is currently more than 61 percent white and women account for only 39 percent of the legislature, yet the female population exceeds 50 percent. He concluded that Maryland's General Assembly, even though it is considerably more diverse than most state legislatures, it still doesn't reflect the diversity of the state.

The same argument can easily be made for the Maryland judiciary because the impact of partisan politics on the composition of the judiciary cannot be underestimated. It has resulted in an effective glass ceiling for minorities interested in serving on the circuit court, leaving the election process as the only viable option to become a circuit court judge in this state. When Governor Marvin Mandel created his executive order decades ago establishing these judicial nominating commissions, someone recognized it would be an imperfect process. It is. The fact that there have only been three African Americans, no Hispanic Americans, no Native Americans, and no Asian Americans in the 300 plus year history of Anne Arundel County Circuit Court exemplifies the insidious glass ceiling created by the judicial nominating committee process. It further underscores the inaccuracies of the Brennan Justice Center article. To remove the only hope that most minority candidates have to being elected to the judiciary is to ensure, particularly in those counties where minorities are underrepresented, such as Allegheny County, Wicomico County, Worcester County, Carroll County, Frederick County, Calvert County, Garrett County, and the like, that the judiciary in Maryland will remain monochromatic. My running in a contested judicial election in 2016 was the only reason there was a sudden interest to diversify the bench in 2018.

The workgroup should pay close attention to the insidious actions of the judicial nominating commission in Anne Arundel County as well as the Appellate Judicial Nominating Committee. From 2005-2017, the Anne Arundel County Trial Court Judicial Nominating Commission conveniently and purposely excluded every minority from its short list. There were protests at the state's capitol at 8 Church Circle in 2017. Only then, in 2017, did Governor Hogan decide to appoint Judge Elizabeth Morris as the first African American female to the bench in its 368 year history. After that, this same judicial nominating commission as well as the Appellate Judicial Nominating Commission assembling for the Fifth Circuit returned to practicing exclusion all over again by short listing white-only candidates. In other words, one and you're done. This is outrageous and should shock the conscious of every citizen on the side of justice and fairness.

For these reasons, we urge you to review the lack of diversity of Native Americans and Hispanic Americans and Asian Americans in all the statistical data and not impede their constitutional choice to file a certificate of candidacy and run for office. The judicial nominating commissions are an unelected body of people with no regulations governing their improprieties especially when they practice exclusion by short listing people based on connections and skin color, and not on merit in violation of the 14th Amendment.