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Justice should not be worried about TV attack ads

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There is a lot of frightening information floating around this election season. A less-talked-about issue but one important to the functioning of the country was raised in an article in Wednesday's Daily Record, "[Political groups fight for control of state supreme courts.](#)" The piece is an example of the depths we have reached in the race to appease moneyed interests.

In several states, outside spending groups — political action committees — are trying to influence the elections of state supreme court jurists. In Washington, a state Supreme Court justice is facing nearly \$1 million in spending from billionaires who apparently are displeased with his decisions. According to the article, "Microsoft founders Bill Gates and Paul Allen and the company's former chief executive, Steve Ballmer, have given hundreds of thousands of dollars to unseat Justice Charles Wiggins, who is seeking his second six-year term." Their chosen PAC will run ads in favor of the judge running against Wiggins.

According to the *Seattle Times*, a different PAC, funded by a billionaire investment firm owner, also is running ads against Wiggins for his opinion in which a child pornography conviction was overturned. Lots of business interests are lined up against Wiggins. Whatever the motives, having judges run in contested elections brings to fore the concern that jurists would be influenced by the interests lined up for or against them.

Billionaires funding PACs to promote or tear down candidates is now the way of the world in legislative and executive branch elections. So why not bring the "free speech" dollars over to judicial elections? Integrity and the belief in the impartiality of our judiciary come to mind. Disparaging the judiciary through the use of campaign ads highlighting issues that may provoke a visceral reaction in the electorate — such as claims that the judge is soft on sexual predators — can have negative affects on judicial decision making. A study by Carlos Berdejo and Noam Yuchtman of more than 276,000 criminal cases in Washington state found that "[under a broad range of specifications ... sentencing of serious offenses becomes more severe as elections approach](#) — sentence lengths increase by around 10% between the beginning and the end of a judge's political cycle." Another study, by Joanna Shepherd and Michael S. Kang [of criminal appeals decisions](#) found that "the more TV ads aired during state supreme court judicial elections in a state, the less likely justices are on average to vote in favor of criminal defendants."

Here in Maryland, we have retention elections for our appellate judges, which may dampen both spending on the campaigns and any potential impact on judicial decisions. However, our circuit court judges face contested elections after their initial appointment to the bench. Simply put, judges in Maryland should not be campaigning for votes. Appealing to the majority is not

always the best for any judge. As Julian Sanchez, a senior fellow at the libertarian Cato Institute, wrote in regard to judicial elections the elections are “a problem because *judges shouldn't be accountable* on the dimensions that elections naturally track.”

So, if you want to promote confidence in the judiciary and the impartiality of our jurists, it is time to support the ending of judicial elections in Maryland. Federal judges do not have to face the voters in contested elections, and that seems a better approach than having any (even imperceived-by-the-jurist) bias toward assuaging voters' fears affecting the outcome of cases or a criminal sentence.

During last year's legislative session, four amendments to the Maryland Constitution were proposed that would eliminate contested elections for circuit court judges (in most cases). However, the bills did not make it out of committee. Maybe this is the year the legislature decides to give the bills an up-or-down vote. Without hearing from those who are against contested judicial elections, the legislature (a body that is supposed to be responsive to its constituents), reform will not happen.

One might want to contact the Maryland State Bar Association to find out how to assist in the ending of contested elections for judges. The MSBA has made its position clear — “For more than four decades, MSBA has favored a strictly merit-based selection process for judges – one which seats only the most qualified jurists on the Maryland bench and promotes judicial accountability – over contested judicial elections.”