

Ballot Question 1

Filling Vacancies in the Offices of Attorney General and Comptroller

Constitutional Amendment

At the November 8, 2016 General Election, Maryland voters will be asked to vote on a proposed amendment to the Maryland constitution to change the way that a vacancy in the office of Attorney General or Comptroller is filled. The amendment was proposed by the General Assembly and as a constitutional amendment it does not go into effect unless ratified by the voters.

Summary of the Proposed Amendment

The proposed amendment would change how vacancies in the offices of Attorney General and Comptroller are to be filled: the Governor would be required to appoint someone who is a member of the same party as the person who was previously elected to the office; and, if the vacancy occurs more than 2 years before the beginning of a new term for that office, a special election must be held to fill the remainder of the term.

Current Law

The Maryland Constitution provides that the Attorney General and the Comptroller are to be elected for four-year terms at the same time that the Governor is elected. The Attorney General is the chief legal officer of the state, providing advice to government departments and generally overseeing the administration of justice within the state. The Comptroller is the chief financial officer of the state, most familiar to Marylanders for his/her role in collecting the income tax.

Section 5 of Article V of the Maryland constitution currently provides that, in the event of a vacancy in the office of Attorney General, the Governor shall appoint someone to serve for the remainder of that term. Section 1 of Article VI of the Maryland constitution currently provides that, in the event of a vacancy in the office of Comptroller, the Governor shall appoint someone to fill the remainder of the term, subject to confirmation by the state Senate. There is no provision for the voters to choose someone to fill a vacancy in either office through a special election, no matter how much time remains in the term of that office.

Origin of the Ballot Question

The 2016 session of the General Assembly passed legislation proposing amendments to the Maryland constitution to change how vacancies in the offices of Attorney General and Comptroller will be filled. The proposed amendment will require the Governor to make appointments to fill a vacancy for Attorney General or Comptroller from a list of three individuals submitted by the State Central Committee of the party with which the previous official was affiliated. The appointed individual serves for the remainder of the term, unless the vacancy occurred 21 days before the filing deadline for a regular statewide election, in which case a special election is held at the same time as that election.

Some Arguments in Favor of the Amendment

The replacement for an officeholder should be of the same political party because that would reflect the preferences of the voters when they elected the Attorney General or Comptroller. Otherwise, the Governor could just select someone from her or his own party, when the voters might have chosen someone of a different party partly to act as a check on the Governor. If there are more than two years remaining in the term, so that a replacement can be elected at the same time as another general election is being held, the voters should choose who will fill the office for that time. By permitting the Governor to appoint a replacement to serve until the next general election or until the post is filled through a special election, the office will not be vacant for very long.

Some Arguments Against the Amendment

Requiring the Governor to appoint someone recommended by a party central committee gives power to that small group of people who were elected only by the members of that party. The Governor should be allowed to choose the best person for the job, regardless of their party membership. When the remainder of the term will be filled by election during a presidential election, running a campaign to select the replacement will be expensive and will add one more set of candidates that the voters must evaluate.

A Vote For the Amendment Means

The Maryland constitution would be amended to require the Governor to fill a vacancy in the office of Attorney General or Comptroller with someone from the same political party as the person originally elected and, if the vacancy occurs in time for someone to run in a general election require that an election be held to fill the remainder of the term.

A Vote Against the Amendment Means

The Maryland constitution would not be amended and current law would continue to apply: the Governor would appoint someone to fill the remainder of the term of the Attorney General or Comptroller when a vacancy occurs, with an appointee to the office of Comptroller subject to confirmation by the Senate.

League Policy

The League of Women Voters of Maryland (LWVMD) does not have a position on the process for filling a vacancy in the office of Attorney General or Comptroller. LWVMD policy on vacancies in the General Assembly favors election of a replacement at the same time as the next general election (that is, in a presidential election year).¹ LWVMD supports a temporary appointment by the Governor to fill a vacancy until the next election (whether a special election to fill the remainder of a term or an election to a new term), provided that the Governor shall appoint someone recommended by the party central committee of the party that the person being replaced belonged to. For example, if a Republican delegate resigned or died, the Governor would be required to appoint someone recommended by the Republican Party Central Committee for the jurisdiction that elected that delegate. The League has not discussed whether this position should apply to state-wide offices as well as the General Assembly. It may be argued that party membership is particularly important in the General Assembly, which as the body responsible for approving the laws of the state should faithfully reflect the policy preferences of the voters. In contrast, party membership may be less important for the offices of Attorney General and Comptroller, who are bound to uphold the law and implement the financial policies adopted by the General Assembly. It could also be argued that both the Attorney General and Comptroller have some freedom of action in setting priorities for the work of their offices and, therefore, it is preferable to choose a successor by election and, when a temporary replacement is appointed, the will of the voters expressed by their electing someone of one party rather than another should be respected.

Because the LWVMD position does not specifically address state-wide offices, it should not be regarded as binding the League to favor or oppose the current amendment. Members may treat the position as informative, noting that there are differences between the role of the General Assembly and the executive branch offices affected by the proposed amendment.

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In 2015, the LWVMD Convention voted to modify this policy to support the use of Instant Runoff Voting, in which voters mark their first, second, third, etc. choices, rather than holding both a special primary election and a special general election.