

Resource Person Guide
Background for Discussions on Ballot Question 1

Origin of Ballot Question – This ballot question:

- 1) was proposed by the General Assembly at its 2016 session (HB 260) and received the approval of 3/5 of the members in the House and the Senate that is required to propose an amendment to the Maryland constitution; and
- 2) because it is an amendment to the Maryland constitution, it will not go into effect unless it is ratified by the voters. That is why it is on our ballot.

The amendment has two parts – The amendment:

- 1) imposes new requirements on the process for the Governor to appoint a replacement for the Attorney General or Comptroller; and
- 2) Requires that a special election be held to fill the last two years in the term of the Attorney General or Comptroller when the vacancy occurs before the filing deadline in the presidential election year.

Duties of the Comptroller – The Comptroller is the general fiscal officer of the state, responsible for collecting, managing and planning for revenue to support the state budget. The Comptroller collects and administers the following taxes: income tax (both personal and corporate), retail sales and use taxes; motor vehicle fuel tax, road tax on motor carriers; state tobacco tax, Maryland estate tax and excise taxes on beer, wine and liquor. The Comptroller serves on the Board of Public Works along with the Governor and the state Treasurer, who is appointed by the General Assembly.

Duties of the Attorney General – The Attorney General represents the State of Maryland in all legal proceedings. The Attorney General serves as legal counsel to the Governor, the legislature, and all State departments, boards and most commissions.

Non-Party Officials – This amendment keeps the door open to an unaffiliated candidate filling one of these offices – it provides that if the official being replaced was not a member of a political party, the Governor may appoint any qualified individual. In that situation, the party committees would not play any role in the process of filling a vacancy. Up to this point, officials elected to these state-wide offices have always been members of one of the major parties. However, given the growing number of voters who choose not to affiliate with either party, this is an important aspect of the proposed amendment.

Partisan Considerations – Members may note that, in the current line-up of officials, this amendment would prevent the Republican Governor from appointing a Republican to fill an Attorney General or Comptroller vacancy when a Democrat was originally elected to that office. When the General Assembly voted on this issue:

- the House vote was 89-49 and all but 1 of the "Nay" votes was cast by a Republican;
- the Senate vote was 33-13, and all but 1 of the "Nay" votes were from Republicans.

Because this is a highly partisan issue, it is particularly important to encourage voters to consider the merits of this change in this process, keeping in mind that the partisan situation is only temporary - in the future, there may well be a Republican elected to one of these offices and

Democrats might regret passing this change, which would block a Democratic Governor from appointing a Democrat as a replacement if a vacancy occurred.

Legislative vs. Executive Offices – Party membership is particularly important in the General Assembly, because it approves the laws of the state and it should faithfully reflect the policy preferences of the voters. (See the League position below on vacancies in the General Assembly.) In contrast, party membership may be less important for the offices of Attorney General and Comptroller, who are bound to uphold the laws and financial policies adopted by the General Assembly. On the other hand, both the Attorney General and Comptroller have some freedom to set priorities for the work of their offices so it would be better 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.

League Position – 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 position 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 in the General Assembly 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 county that elected that delegate. Where a district crosses county lines, each of the party central committees for those counties has one vote in choosing someone to recommend to the Governor. If there is a tie vote among the central committees (which could happen if each county insists upon its own candidate), each candidate who received the vote of a county central committee is forwarded to the Governor, who can appoint any of those candidates. In recent years, Governors have requested a list of three names from which to make the appointment to fill a vacancy.

The League has not discussed whether its position on filling vacancies in the General Assembly should apply to state-wide offices as well as the General Assembly. 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.

What about a U.S. Senator? – The same bill (HB 260) that included this constitutional amendment also amended the Maryland law that provides for the Governor to appoint someone to fill a vacancy in the U.S. Senate from Maryland. Because those provisions were in the ordinary law and not part of the state constitution, the General Assembly could change them without further approval by the voters. As amended by the legislature, the law now requires the Governor when appointing someone to replace a Senator who has died or resigned to choose someone from a list of names provided by the party central committee of the party that the Senator was a member of.

¹In 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.