

Renaming Maryland's Appellate Courts

WHAT'S IN A NAME? According to Maryland's voters, there's something to it. In the 2022 general election, they approved an amendment to the state constitution to rename the state's high court from the "Court of Appeals of Maryland" to the "Supreme Court of Maryland."¹ Voters also approved changing Maryland's intermediate appellate court from the "Court of Special Appeals of Maryland" to the "Appellate Court of Maryland."² Now New York and the District of Columbia are the only jurisdictions where high courts are still the "Court of Appeals."

Along with the new court names, voters also gave me and my colleagues on the Supreme Court new job titles — replacing "chief judge" and "judges" with "chief justice" and "justices."

The Creation of Maryland's Appellate Courts

Maryland's high court traces its roots back to at least 1664, when the Upper House of the Legislature began hearing appeals of judgments of the Provincial Court. When sitting in that capacity, the Upper House was referred to as the "Court of Appeals."³

Then, in 1776, the Maryland Constitution formally created a "Court of Appeals, composed of persons of integrity and sound judgment in the law, whose judgment shall be final and conclusive, in all cases of appeal."⁴ And so it was, for the next 246 years.

In 1966, the Court of Special Appeals was established — the first intermediate appellate court in Maryland. The "special" in the name referred to its limited jurisdiction to hear only certain types of cases (initially just criminal).⁵ But over time, that jurisdiction expanded greatly, transforming the court essentially into an appellate court of general jurisdiction and



thereby rendering its "special" name confusing.

Jumping on the "Supreme Court" Bandwagon

Maryland was not the only early state high court without the word "supreme" in its name. New Jersey's and New Hampshire's (both established in 1776) were originally called the "Court of Appeals" and the "Superior Court of Judicature," respectively. Virginia, Massachusetts, and Connecticut, by contrast, were early adopters of "supreme" high courts, and included that word in their high courts' names by 1784.⁶ Over time, the latter trend won out — no doubt influenced by the creation of the Supreme Court of the United States in 1789 — and the vast majority of states named (or renamed) their courts of last resort "supreme" in one way or another.

Despite the pro-"supreme" movement, the change in Maryland was not a foregone conclusion. In fact, there were several unsuccessful attempts to "supremify" the high court's name over the preceding half-century. Name-change proponents renewed their efforts in 2021, introducing bills in the House of Delegates and the Senate. Testifying in support of the legislation, then-Court of Appeals Chief Judge Mary Ellen Barbera explained that Maryland's current practice was

BASED ON EVIDENCE THAT THE POST-REVOLUTIONARY MARYLAND GENERAL COURT WORE RED ROBES, THE MARYLAND COURT OF APPEALS ADOPTED THEM IN 1972. (PHOTO COURTESY SUPREME COURT OF MARYLAND; THE AUTHOR IS STANDING, THIRD FROM LEFT.)

out of step with the rest of the country and was creating confusion among Marylanders and beyond, as "lawyers, law students, and litigants research, contact, and even file papers with the wrong court." She noted that while the state's "appellate courts do carry a rich history," they would "continue to do so even as their names change to meet the need for greater clarity."⁷

Apparently, the people were convinced: Both houses passed the name-change bills by overwhelming margins, Gov. Larry Hogan approved them, and the voters — called upon to make the final decision — approved the constitutional amendment by a margin of 1,340,952 to 447,252.⁸

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¹ *Voter-Approved Constitutional Change Renames High Courts to Supreme and Appellate Court of Maryland*, Md. Cts. (Dec. 14, 2022), <https://www.courts.state.md.us/media/news/2022/pr20221214>.

² *Id.*

³ HON. CARROLL T. BOND, *THE COURT OF APPEALS OF MARYLAND 5-7* (1928).

⁴ MD. CONST. OF 1776, art. LVI.

⁵ Hon. Hall Hammond, *Commencement of the Two Hundredth Anniversary of the Maryland Court of Appeals: A Short History*, 38 MD. L. REV. 229, 239 (1978).

⁶ Pennsylvania has had a court called the "Supreme Court" since 1722, but it has not always been the Commonwealth's highest court. From 1780 through 1808, Pennsylvania's court of last resort was the High Court of Errors and Appeals, which included the Supreme Court justices, as well as judges from other courts and three commissioned persons. See *The Unified Judicial System of Pennsylvania*, PENN. CTS. (last visited Feb. 6, 2023), <https://www.pacourts.us/learn/history>.

⁷ *Senate Judicial Proceedings Committee (2/24/2021)*, MD. GEN. ASSEMBLY (last visited Feb. 6, 2023), https://mgaleg.maryland.gov/mgaweb-site/Committees/Media/false?cmte=jpr&clip=JPR_2_24_2021_meeting_3&ys=2021rs.

⁸ GOVERNOR'S PROCLAMATION DECLARING THE RESULT OF THE ELECTION OF NOVEMBER 8, 2022, FOR CONSTITUTIONAL AMENDMENTS.