



P.O. Box 582  
Woburn, MA 01801

woburnwelcomes.com  
woburn.welcomes@gmail.com  
*find us on Facebook and Twitter*

## **Woburn Welcomes - Governor's Council Questionnaire**

The following questionnaire was sent to both declared candidates in the Governor's Council 3rd District race. Both candidates - incumbent **Marilyn Petitto Devaney** and **Nick Carter** - returned the questionnaires and are seeking endorsement.

These answers will be part of the process Woburn Welcomes members will use to determine whether we will endorse a candidate in this race. We are also making them public so that our wider community and use them to inform their own voting decisions. All candidates were made aware that the questionnaires would be public before they filled them out.

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### **A: General Information**

- 1. Please introduce yourself and explain why you feel you're the best person to represent the Third District on the Governor's Council.**

**Devaney: I am Marilyn Petitto Devaney. As an incumbent I bring 18 years of experience and knowledge of vetting nominees from judges to Parole Board members.**

**As the only full time councilor I meet with every nominee from Industrial Accident Board to Judge in 18 years.(3-4 hours)**

**I have a proud voting record for diversity and women.**

**I have cast historic votes in my tenure- the first in Massachusetts - Majority of women on the SJC - First in the country.**

**1st most diverse SJC - First African American Chief Justice – Justice Ireland- First African American Woman - Justice Hines- First openly gay(woman) -Justice Lenk- First Asian-American(woman) Justice Duffly 2nd African American Woman- Justice Bud.**

**First Hispanic member and Chair on the Industrial Accident Board- Omar Hernandez**

**First African American Clerk Magistrate in Palmer Court- Benjamin Barnes – and many others**

**Justice Gants- the first Jewish Chief Justice of the SJC. I voted for him three times through my tenure.**

**I also voted for Justice Hines three times though my tenure.**

**I am not a lawyer-I have no conflict of interest- Lawyers, by law, who are Governor's councilors are allowed to appear before the judges who they vote on.**

**I attend Parole Board hearings- visit prisons- testify on bills in the State house i.e. Against maximum minimum sentencing and testify on other criminal reform bills. I am a member of We the People – Corporations are not People.**

Carter: I'm a lifelong Democrat and I'm running for Governor's Council against Marilyn Petitto Devaney. It's a little known but important office!

I have the experience for this job, which focuses especially on the review and confirmation of our state court judges and clerk magistrates. I am a 25 year trial attorney and have worked in nearly all our courts on civil and criminal matters. I volunteer with the Massachusetts Bar Association to improve our justice system. I know what makes a good and a bad judge and know what needs fixing.

I will offer a fresh perspective, a steady temperament, and direct experience in the practice of law in today's Commonwealth. I will help the Governor's Council do more to support the rule of law and the rights of citizens. I will help promote and approve judges who will embrace criminal justice reform and turn us away from the mistake of over-incarceration. I pledge that as a Councilor I will do all I can to protect our democracy and way of life, which I believe are under threat.

**2. What would your top three priorities be if elected to the Council?**

Devaney: 3 examples accomplished:

- a. When first elected - the Parole Board had all prosecutors- investigated and found - was not in conformance with state statute for over 30 years- went to legislature – testified and presented testimony – now we have an expert on the board who identifies inmates mental issues, learning problems, addictions, etc. to reenter society successfully.
- b. When first elected Councilors were accepting political donations from nominees right up to the time they voted on them-

I successfully have governors include in their executive orders to prohibit judicial nominees upon application, from giving political donations to councilors, governor and lieutenant governor.

- c. I established the very first Governor's Council website- There was no public information regarding the Council. It provides names and districts of the 8 councilors,- the boards and commissions we vote on and the latest nominees of the governor and the dates of the council hearings for those nominees – inviting the public.

Present 3 priorities-Continue to demand transparency, accountability and continue to be always available to constituents and all people of Massachusetts.

My priority will always be – to have the Governor take responsibility and throw out the phony JNC process of appointing.

The process is not– honest and fair to all attorneys in Massachusetts who apply-  
Keep Political nominees from jumping the line.

I have talked out against the JNC's unethical appointing of nominees to a court he/she didn't apply to (and after the posting was closed)

-which rejects any attorney for an interview (who applied according to the rules before the closing date for that particular court)

To keep speaking out- against the JNC- Their investigation of nominees is unacceptable.

FYI - The JNC has 21 members- The chair splits up the members - has interviews for nominees with only - 6-8 maybe 10 members at most present to interview a nominee for a judgeship –lifetime position - \$190,000

Twenty-one (21) JNC members are voting- more than half are voting who never even saw the nominee. THIS IS NOT AN OPEN PUBLIC PROCESS.

FYI (Past practice- all 21 JNC members were present for the interview of nominees –to ask questions and vote to recommend the nominee to the governor.)

I will keep encouraging the press to attend our hearings -to educate them about the importance of the Governor's Council.

To have all our hearings and assemblies televised- (My Top Priority from Day 1)

I have tried for 18 years- want cameras—to televise all hearings – Received Governor's Attorney letter saying – no room - against the Disability Act- no money(Council has NO budget)

Carter: My first priority is to ensure excellence. We want and need the finest judiciary. We need to protect our judges from political pressures and give them the discretion to make hard decisions. An independent judiciary that upholds the rule of law is the foundation of our democracy.

I want to advance criminal justice reform. I am happy that we recently enacted the omnibus criminal justice reform bill on a bipartisan basis. The challenge of ensuring fairness, which is the goal of the reform law, has now been moved into the hands of our judges. For example, we have eliminated many mandatory minimum sentences; now the judges have discretion to set those sentences. We need judges who will continue to look for smart alternatives to incarceration, especially for non-violent offenders. We still incarcerate too many people (4 times as many as we did 40 years ago) at huge taxpayer expense -- \$55,000 per year. There is a smarter, less costly way to ensure safety and justice.

We need fairness and more diversity in our courts. Only a third of our Superior Court trial judges are women and we have almost no judges or clerk magistrates of color. I will work to ensure that our courts begin to fairly reflect our entire community.

3. What, if anything, would you do to increase citizen and voter awareness of the role of the Governor's Council?

Devaney: To have media involved in the Council proceedings –Most importantly - to continue as I have done through the years - to talk throughout my district – educating the role of the council to the people- It is most misunderstood- People think the Council chooses the judges-

Nominees apply to the JNC -the JNC chooses the judges – governor approves – and we are given just one person to vote yes or no We are not allowed to know how many applied or who applied.

Carter: I will be an active Governor's Councilor who will use media and social media to raise awareness of the importance of our courts and the Council's role in selecting judges. I also believe that by making the Council's proceedings more transparent and accessible to the public, as described below, the public's awareness of the role of the Council will rise.

4. What, if anything, would you do to increase transparency of decision-making on the Governor's Council?

Devaney: The Governor's Council is more transparent than the legislature- Every name of the Governor's nominee is made public by the Governor in the press-

The date of the nominee's public Governor's Council hearing is published in the newspaper- and on the public

Governor's Council website –with the public hearing date - and our public assemblies where the votes take place. All votes of the Council are by roll call. All hearings are recorded.

I have and will continue to go out in my district and educate what the Governor's Council is – its authority and importance.

Again- cameras and televised hearings-and public assemblies when we vote on the nominees (Governors over the years tell me they cannot provide this)  
Continue to encourage the media!!

Personally – having no office staff- I feel it is my responsibility to investigate fully every nominee- have met- for 18 year with every nominee ( in fact just today)

I am responsibility for myself – I do not poll the council on who they are going to vote for. At public assembly – that is where the public has the opportunity to hear from councillors - why they voted the way they did on a nominee.

Carter: The Governor's Council needs to be transparent and accessible to the public. While hearings are currently open, they are not accessible because only those willing and able to go to the State House can observe. The hearings also are not recorded and easily available to the public. I have been proposing that the hearings be recorded audio-visually and streamed by live webcast to the public so that anyone can observe the hearings from their home or office. This is not expensive and would discipline the Council to conduct hearings professionally.

## **B: Nominations and Pardons**

1. What qualities or characteristics are most important to you in approving nominations? Explain your philosophy when deciding whether to approve or reject a nominee.

Devaney: First I look for honesty – I look for qualifications, experience, temperament, empathy – believe in second chances – oppose one size fits all mandatory minimum sentencing, believes in all rights- Women , gender, all human rights.

As one who has been endorsed every year by the Bay State Stonewall Democrats- for my position -this is most important to me. I would reject a nominee if a nominee has lied in his application or at hearing about his experience or education , or did not disclose any information such as complaints filed against him as required.

Carter: The qualities and characteristics most important to me in approving judicial nominees are: (i) excellence in the law, which might include excellence as a trial lawyer, an appellate advocate, or an advocate for a governmental or justice organization; (ii) hard work, because excellence as a judge requires it; (iii) integrity, because the rule of law depends on judges applying the law without regard to personal self-interest or political interests; (iv) humility and decency toward others, because a good judge commands respect by giving respect to all; and (v) compassion, because a judge's goal in the arena of criminal law should combine punishment and deterrence with a purposeful intent to rehabilitate and restore everyone to the community where they can be productive and contributing members.

When it comes to approving nominees to the Supreme Judicial Court, I also will make sure the nominee will continue to protect certain established constitutional rights and limitations on governmental powers, as discussed below.

2. To what extent do you feel the Governor's Council should seek gender parity in its nominees?

Devaney: The biggest impediment is-We don't choose nominees – I want more women- more diversity- Pleased to report we have more this past year and see more coming in- - voted for more women in the past months-i.e. two with roots in India- to Superior and District court.

I only can vote on the one before me- I have requested the names of the last 3 being considered by their JNC – told - I have no authority under the Mass Constitution- I recently voted for only - the 4th woman judge in the Juvenile court in Middlesex Court- This is Unacceptable!!

Carter: Gender equity is important. We should have gender equity in our courts. See answer above to Question A.2.

3. To what extent do you feel the Governor's Council should be prioritizing nominees with diverse sexual orientations, economic backgrounds, racial and ethnic identities, and religious beliefs?

Devaney: I believe the Governor's Council should be prioritizing the nominees for diversity as you have mentioned here but cannot as mandated by the Massachusetts Constitution

The Governor's Council unfortunately has no authority under the Massachusetts Constitution to prioritize nominees- The council is only given one person to vote on. There is not a choice- The Council does not know if any people of diversity even applied.

Carter: Fairness and diversity go hand in hand. We want and need diversity of all kinds so that our courts fairly reflect the community they serve. This is a priority for me. See answer above to Question A.2.

4. To what extent, if any, should the Governor's Council consider stances on national or international political issues when considering a nominee? For example, recent developments in the area of federal immigration law and policy pose significant challenges for judicial appointees. To what extent should or will issues such as this influence your decision to recommend a nominee?

Devaney: I recently asked a nominee about the recent immigration situation. (I personally oppose the separation of families and am involved in public protests). but - nominee if appointed has no vote on national international political issues they simply say- "I will follow the rule of law. " but I will ask.

Carter: With respect to nominees to the Supreme Judicial Court, I will consider their views on issues of national importance. I would expect the nominee to demonstrate their support for a woman's right to choose whether to terminate a pregnancy as established in *Roe v. Wade*, the right of any two people to marry regardless of sexual orientation as established in *Goodridge v. Dept. of Public Health*, the state's authority to establish common-sense gun control within the limit of the Second Amendment as re-established in *Ramirez v. Commonwealth*, the prohibition on the death penalty unless and until the state overcomes 'strict scrutiny' of the court as established in *Commonwealth v. O'Neal*, a recognition in deciding cases that racial profiling takes place (though it should not) as the SJC recognized in *Commonwealth v. Warren*, and recognition of the critical threat from carbon pollution and climate change and a willingness to enforce the Global Warming Solutions Act's mandated deadline of reducing carbon pollution 80% by 2050, if called upon to do so in a case.

As for immigration issues, I would expect that judges would follow the well-established law that people may not be detained for a violation of immigration law, which is a civil offense. I would also hope that our judges would do what they can to avoid the separation of immigrant parents from children.

5. Explain your pardon and commutation philosophy: what qualities or characteristics are most important to you in consenting to a pardon or commutation?

Devaney: I look at what contributions this person has made – what he has done with his life- family- work- community activities – has shown to be respected by all who know him. Listen to people who recommend him.

I believe in second chances- These individuals have been prevented from getting a job they need - and banned from certain activities. We had a man 57 years old who made a mistake at 22 – and just coming before the Governor’s council- This is egregious.

These people who have received a pardon from the parole board should not be waiting decades- There should be an outcry by the public! I need those voices!

Sadly I’m sure some names in the file have even died.

Commutations- I look for what things this person has done to rehabilitate- what programs- i.e. alcohol anonymous- drug treatment clinics- having good conduct – recommended by those who work with her/him every day- shown an interest in learning life skills to use when released.

As I have stated - This has been from day 1 my priority- Unfortunately – governors collectively through the years have presented few pardons and commutations despite my lobbying for them. You can thank Governor Weld(before my time) who was “hard on crime’ and virtually stopped pardons and commutations.

Carter: A pardon fully exonerates a person who has been convicted of a crime. A commutation does not exonerate, but shortens a person’s sentence. There should be a clear and high standard for issuing them. Otherwise, there is the potential they might be given out for political or otherwise improper reasons.

A pardon or commutation would be appropriate if there is clear and convincing evidence that a person was wrongly convicted. This would be the case if DNA evidence exonerates a person.

A pardon or commutation would be appropriate if society evolves in its understanding of what constitutes a crime. For example, possession of marijuana for personal use is no longer a crime in Massachusetts. It would be appropriate to pardon someone or to commute a sentence based on a prior conviction for possessing marijuana for personal use. This would eliminate an unnecessary and unfair criminal record.

A pardon or commutation might be appropriate as an act of restorative justice and mercy where a person, through acceptance of responsibility, demonstrated good works and unique leadership, stirs a communal desire for forgiveness. Those who meet this last category would be rare as it is difficult to establish and apply a standard.

6. Governor Baker’s administration has been accused of being too reluctant to recommend pardons and commutations. Do you agree with this assessment? Why or why not?

Devaney: Governor Patrick only presented 3 pardons and 1 commutation in his tenure- 8 years. It is upsetting to me to see in our office draws full of names of people who have been pardoned by the Parole Board- going back decades- whose names remain in the governor’s office- with councilors unable to vote on them.( again according to the Massachusetts Constitution)

Governor Baker has not presented one pardon or commutation. I am 100% opposed!!

Carter: I believe Governor Baker has been, and Governor Patrick was, too reluctant to recommend pardons and commutations. Governor Baker has yet to recommend one; Governor Patrick only recommended four

pardons and one commutation in his two terms. The numbers speak for themselves. Governor Weld recommended 26 pardons and seven commutations and Governor Sargent (Republican) recommended 1,754 pardons and 40 commutations.

7. Should the Commonwealth be actively considering the pardon and/or commutation of low-level, non-violent drug offenses more regularly, in light of changes to marijuana and criminal justice law over the past several years?

Devaney: Absolutely!

Carter: Yes. See answer above to Question B. 5.

### C: Additional Information

1. Is there any additional information you feel we should know as we consider endorsements in this race?

Devaney: I welcome the opportunity to meet with you. Thank you so much for this opportunity.

Carter: It's time for a change and I am in a position to win. I have been endorsed by Scott Harshbarger (former AG), Steve Grossman (former Treasurer), Gerry Leone (former Middlesex County District Attorney), State Senators Mike Barrett and Cindy Friedman, Representatives Jen Benson, Carolyn Dykema, Alice Peisch, Frank Smizik, and Tom Stanley, and former Representative Marty Walz, and more than thirty elected officials including a majority in the three largest communities in the district: the Newton City Council, the Arlington Select Board and the Brookline Select Board (unanimous). A majority of the Select Board in Concord and a majority of the School Board in Lexington have endorsed me. Four Democratic town committees have endorsed in this race (Billerica, Stow, Wellesley and Boston Ward 5), and all have endorsed me, three unanimously. The number and breadth of endorsements is significant given that the incumbent has held the office for 20 years.