



National Association
for Court Management

"Committed to Excellence"

**National
Association
for Court
Management
(NACM)**

**To Join NACM visit NACM
Website: www.nacmnet.org**

Mission



The mission of the National Association for Court Management (NACM) is to be an inclusive member organization dedicated to developing all court professionals as leaders, providing community, sharing information, and advocating on important court and justice system topics.

Membership Benefits



- Continuing education opportunities
- Networking opportunities
- Publications
 - Court Manager
 - Court Express
 - Guides
- CORE[®] Champion Certification
- Mentoring Opportunities
- Access to ICM courses
- Conference videos and webinars
- Reduced conference fees

NACM Webinars



Recent Webinars offered:

- Landmark SCOTUS Decisions: Haaland v. Brackeen (2/24)
- From Parchment to Pixels: How AI Can Turbocharge Court Data Accuracy and Efficiency (3/24)
- CORE Leadership (4/24)
- Increasing Court Appearance (6/24)
- DEI: Evolution of Terms, Concepts, and Strategies (9/24)
- Understanding AI in Courts (11/24)



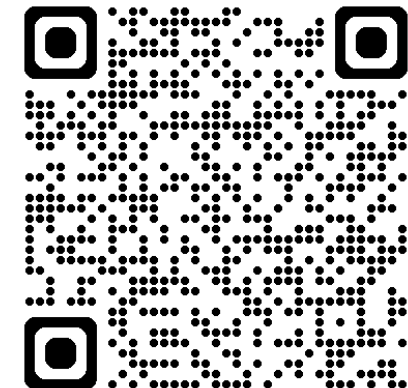
NACM Webinar Page

Standing NACM Publications



Court Express, Court Manager & Guides

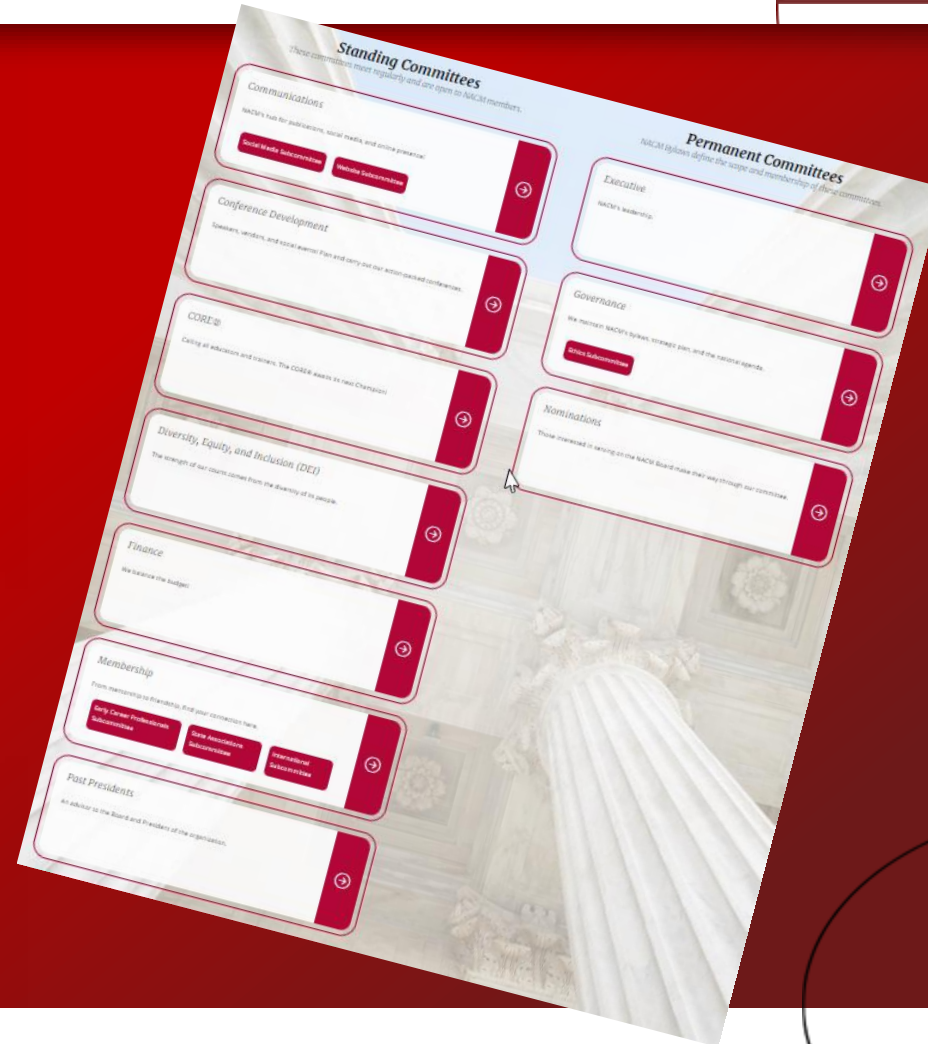
- DEI Guide 2023
- The Core in Practice (2024)
- Court Security Guide (2024)
- Courting AI Guide 2024



NACM Committees



- Governance
 - Ethics
- Communications
 - Website
 - Social Media
- Education
 - Conference Development
 - CORE®
- Membership
 - Early Career Professionals (ECP)
 - International
 - State Associations
- Diversity, Equity and Inclusion (DEI)



Future Conferences



NEXT CONFERENCE

2025 Midyear Conference
Atlantic City, New Jersey

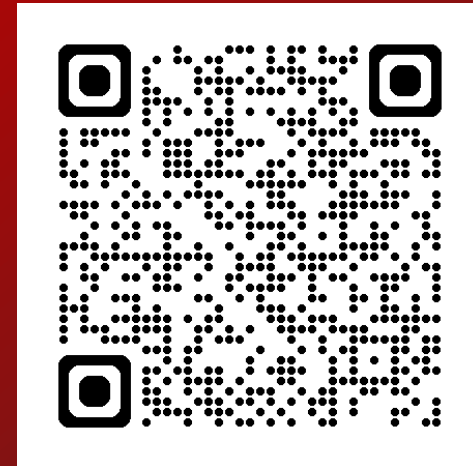
February 9, 2025 - February 11, 2025

2025 Annual Conference
Omaha, Nebraska

July 20, 2025 - July 24, 2025

**Midyear Conference: Measuring and Taking
Action on Public Trust and Confidence**

**Annual Conference: Promoting Public Trust
and Confidence through Service and
Collaboration**



Call for Proposals

“Committed to Excellence”

Social Media



State Courts in Focus: State Constitutional Trends & Legislative Assaults on Judicial Independence

Presented By:

Brennan Center for Justice

Alicia Bannon

Mike Milov-Cordoba

October 22, 2024



About the Brennan Center

The Brennan Center for Justice at NYU School of Law is a nonpartisan law and policy institute that seeks to improve our systems of democracy and justice. We work to hold our political institutions and laws accountable to the twin American ideals of democracy and equal justice for all.

The Brennan Center's Judiciary Program works to realize a fair and inclusive judicial system that protects fundamental rights and democratic values.

About *State Court Report*

State Court Report is a nonpartisan news source, resource, and commentary hub covering state constitutional developments in high courts across the 50 states.

Commentary



ECONOMIC AND LABOR RIGHTS

Supreme Court Strengthens Federal Protections for Property Rights

Tyler v. Hennepin County shows why a federal floor for constitutional property rights is vital.

By Ilya Somin

CIVIL DUE PROCESS **JUDICIAL INTER...**

The Promise of State Courts: Restoring Jury Trials

How to bring back the "inviolable" right to a jury trial.

By Hon. Pierre H. Bergeron

Analysis from a wide range of experts on state cases, trends and scholarship

Browse the State Case Database

Keyword Select state Select issue Year Case of Note Pending

Displaying 1 to 10 of 566 results

CASE OF NOTE **ELECTIONS** **CIVIL RIGHTS** **GOVERNMENT STRUCTURE**

Bennett et al. v. Ohio Redistricting Commission et al.

Held that legislative districts violated new constitutional provisions prohibiting partisan gerrymandering.

Ohio May 25, 2022

League of Women Voters Ohio et al. v. Ohio Redistricting Commission et al.

Held that legislative districts violated new constitutional provisions prohibiting partisan gerrymandering.

Ohio May 25, 2022

The site tracks major litigation across all 50 states and a dozen issues, including elections, reproductive rights, and criminal law.

State Courts: A Significant Democratic Institution

- 95 percent of all cases are filed in state courts.
- State supreme courts are typically the **final word** on state law.
- **Significant rulings** in areas including abortion rights, gerrymandering, criminal law and procedure, & environmental justice.
- Growing **political attention** poses threats to judicial independence.



U.S. Constitution is a Floor, Not a Ceiling

“State courts no less than federal are and ought to be the guardians of our liberties.”

Justice William H. Brennan

“We have fifty-one constitutions in this country, and there is nothing to prevent the state courts from offering their own interpretations of these guarantees.”

Chief Judge Jeffrey S. Sutton



State Constitutional Provisions May Offer Stronger Protections

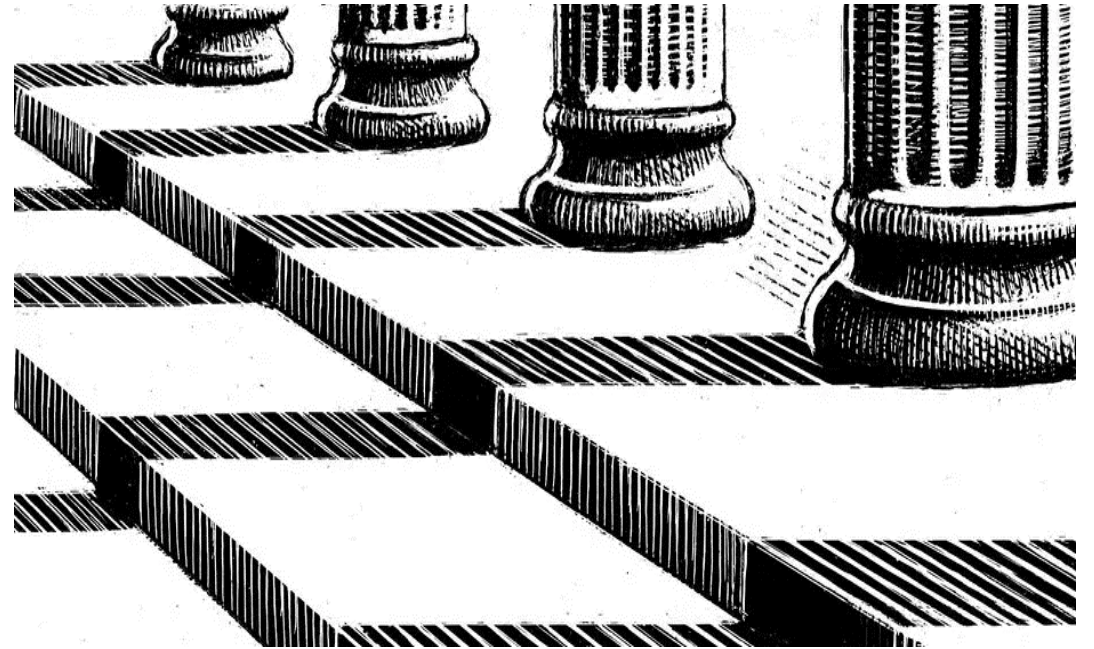
- For example, Massachusetts' highest court recently outlawed life in prison without parole for people under 21.
- The court relied on the MA constitution's prohibition against "cruel or unusual punishment."
- Other significant youth sentencing rulings in NJ, IA, WA



State Constitutions Have Many Provisions That Don't Exist in the U.S. Constitution

Examples of unique provisions:

- **26 states** have free elections clauses.
- **22 states** have Equal Rights Amendments.
- **40 states** have open courts or access to remedies provisions.
- **50 states** have provisions mandating public education.



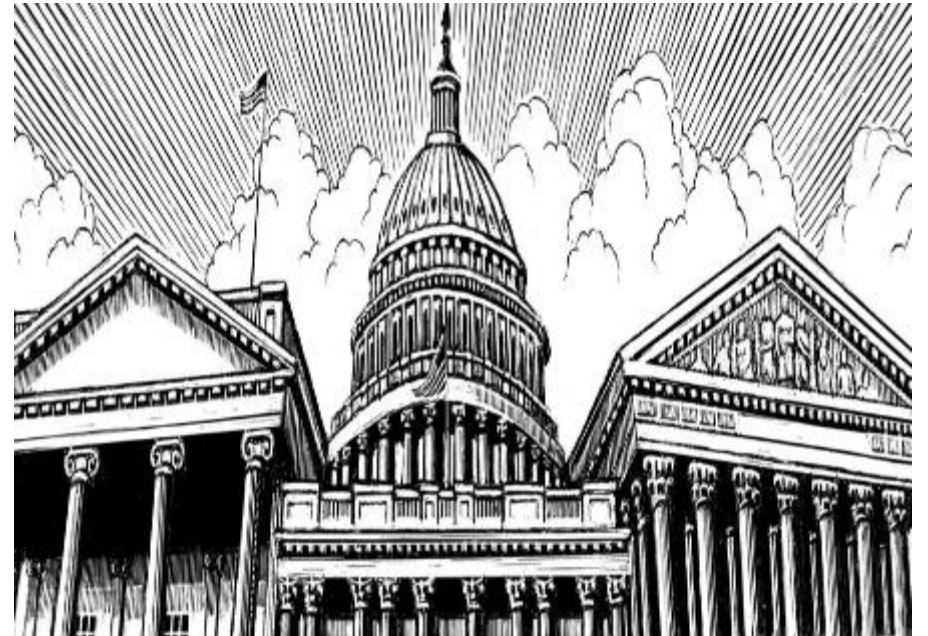
Example: The First Constitutional Climate Trial

- Montana law bars state officials from considering **climate change impacts** when conducting environmental reviews.
- Trial court: law violated the state constitution's guarantee of **"a clean and healthful environment"**
- On appeal to the Montana Supreme Court



Trends in Abortion Litigation

- **11 state high courts** have found that their state constitutions protect at least limited abortion rights and access.
- **Pennsylvania** Supreme Court and **Nevada** trial court recently applied **state ERAs** to Medicaid abortion bans.
- **Florida** recently reversed abortion protections; **Texas** declined to clarify life/health exceptions.
- Major cases pending before high courts in **Wisconsin & Georgia**
- Potential **abortion ballot measures** in 10 states this fall (incl. FL, AZ)



State Courts Are Increasingly Operating In a Highly Politicized Environment

- Legislatures attacking independence of state courts
- Tens of millions of dollars being spent on judicial elections
- Judges threatened with impeachment
- Court budgets vulnerable
- Judicial security concerns



Examples of Legislative Assaults on Courts

- How bills attack court independence:
 - Inject politics into how judges are selected
 - Politicize judicial discipline
 - Legalize judge-shopping
 - Limit the enforcement of court rulings
 - Gerrymander the courts
 - Reduce or control allocation of court resources



Bills Undermining Judicial Independence

- Since 2018, 483 bills introduced; 79 passed:
 - 2018: 60 bills introduced; 18 passed.
 - 2019: 48 bills introduced; 20 passed.
 - 2020: 42 bills introduced; 1 passed.
 - 2021: 135 bills introduced; 19 passed.
 - 2022: 74 bills introduced; 5 passed.
 - 2023: 124 bills introduced; 16 passed.



U.S. Supreme Court Shifts Major Questions to State Courts

- Major national issues have moved to state court.
 - Abortion: Abolished federal constitutional right to abortion
 - Partisan Gerrymandering: Claims found non-justiciable.
 - Voting Rights: Struck down portion of the Voting Rights Act

Supreme Court Bars Challenges to Partisan Gerrymandering

In 6-to-3 Ruling, Supreme Court Ends Nearly 50 Years of Abortion Rights

The decision will lead to all but total bans on the procedure in about half of the states.

Supreme Court Invalidates Key Part of Voting Rights Act

2023: A Big Year for State Courts

- In 2023, state courts filled the vacuum, issuing major decisions on national issues.
 - Abortion: State supreme court decisions in many states; state lawsuits still pending
 - Partisan Gerrymandering: Major decisions across the country (AK, KY, NH, NM, NV, NY & NC)
 - Voting: Ballot access; direct democracy; felony disenfranchisement

As Both Parties Gerrymander Furiously, State Courts Block the Way

State judges have been throwing out congressional maps they call partisan gerrymanders, in a sign of the effects of a 2019 Supreme Court ruling that pushed the issue below the federal level.

Trends to Watch in State Abortion Litigation

Courts are considering new foundations for abortion rights, while incremental challenges may slowly chip away at Dobbs.

By Mary Ziegler | Published: September 28, 2023

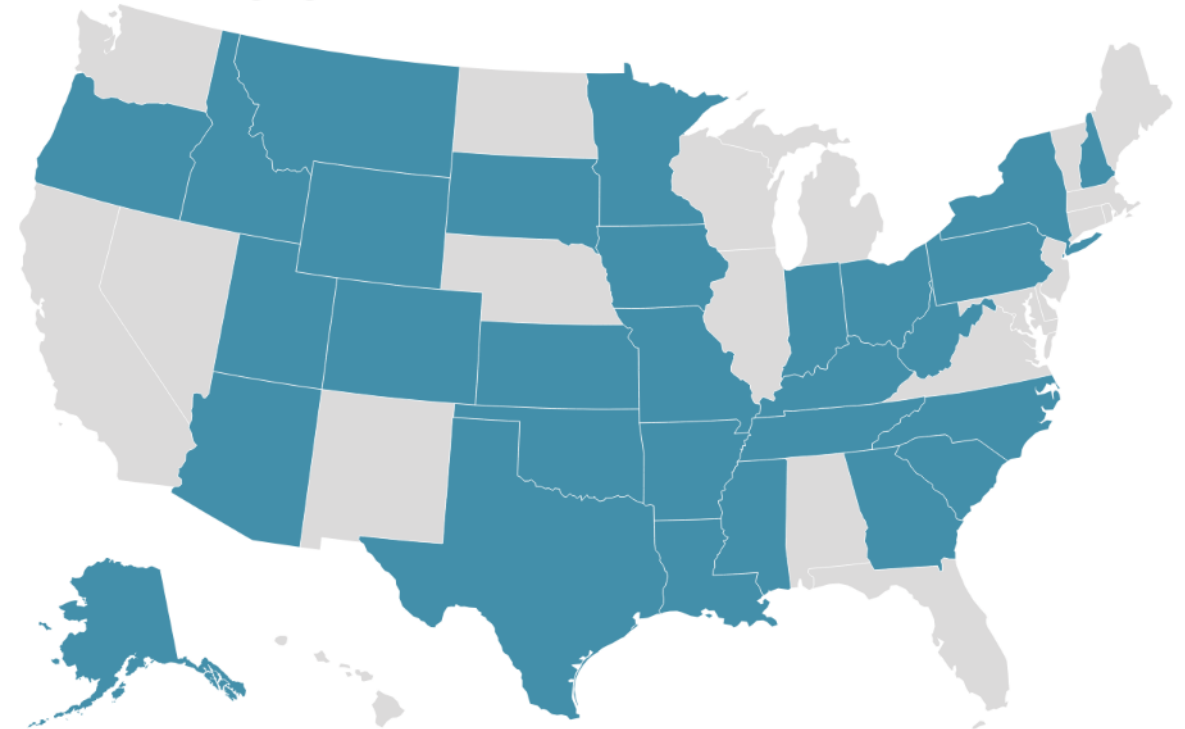
When the Supreme Court fails, are states' high courts an answer?

Legislative Assaults on Courts in 2023: Toplines

- 29 states considered 124 bills attacking judicial independence.
 - 16 bills enacted.
 - 7 bills passed at least one chamber.
 - 17 bills passed a committee or subcommittee.

Legislative Assaults on State Courts — 2023

● States with bills targeting the courts



Types of Legislative Assaults on Courts in 2023

- Major Features of the Bills
 - Made Partisan Changes to Judicial Selection
 - Changed Judges or Courts that Hear Cases Against the State (“Judge Shopping”)
 - Politicized Judicial Discipline and Ethics
 - Interfered with Judicial Decision-Making



Judicial Selection: Elections, Merit Selection, Appointments, & Hybrid Systems

- Wide variety of judicial selection systems
 - 14 states use nonpartisan elections
 - 14 states use merit selection
 - 10 states use gubernatorial appointment
 - 7 states use partisan elections
 - 3 states use hybrid systems
 - 2 states use legislative appointment



Interactive map available at:
<https://www.brennancenter.org/judicial-selection-map>

Lawmakers Targeting Judicial Selection

- In 2023, lawmakers made **partisan changes** to how judges are selected.
 - Enacted bills to consolidate control over judicial nominating commissions with governors (ID, UT)
 - Governors control both the vetting and appointment of judicial candidates
 - Considered bills to implement partisan judicial elections (AR, MT, OK, TN, WV)

Republican-led measure would upend Utah's judicial nominating process



Kim Bojórquez

How partisan supreme court elections are shaping Ohio

BY: MEGAN HENRY AND SUSAN TEBBEN - OCTOBER 7, 2024 5:00 AM



Lawmakers Judge-Shopping

- In 2023, lawmakers created new courts or changed venue rules to put a thumb on the scale in favor of the legislature in litigation challenging state law.
 - Enacted bills creating new courts or judgeships to hear constitutional challenges against the state (NC, TX)
 - Venue-changing bill struck down by Kentucky Supreme Court (KY)

Partisan budget proposal is a five-alarm fire for North Carolina's courts



MELISSA PRICE KROMM

Kentucky Supreme Court Strikes Down Law Meant to Steer Cases Away from 'Liberal' Judges

The court held that a law allowing parties to change venue in certain cases violated state constitutional separation of powers principles.

Lawmakers Politicizing Judicial Discipline

- In 2023, lawmakers **weaponized judicial ethics** to attack judges who issued rulings against the legislature.
 - Enacted bills to install partisan allies on the bodies that investigate judicial misconduct (MT, NC)
 - Enacted bill to create civil liability for judges whose conduct departs from their public duty (MT)
 - Misuse of ethics bodies to target sitting judges (NC, WI)

Remarks on Diversity Lead to Investigation of North Carolina Judge

A justice of the North Carolina Supreme Court is being investigated by a state judicial commission after saying a report of bias in the judiciary should be examined.

JURISPRUDENCE

What I Got for Challenging Trump's Coup Attempt From the Bench

As a Wisconsin Supreme Court justice, I never imagined that working to protect our country's democracy would go like this.

BY JILL KAROFSKY

FEB 15, 2023 • 5:41 PM

Lawmakers Interfering With Judicial Decision-Making

- In 2023, lawmakers interfered with judges' authority to strike down state laws, particularly abortion bans.
- Enacted bills raising the standard required for judges to issue injunctions (MT, UT)
 - UT: Passed in response to a judge enjoining an abortion ban
 - MT: Passed to undercut litigation concerning Medicaid coverage of abortions

**Utah Passes Resolution
Changing Court Rules to
Undermine Judicial
Protection From Abortion
Ban**

For Immediate Release: Feb. 14, 2023

**Republican lawmaker
advancing changes to
how courts issue
injunctions**

A suite of bills mark the Legislature's first go this session at changing judicial procedures

Legislative Assaults on Courts in 2024

- Lawmakers trying to politicize judicial selection where courts have issued rulings against the legislature on high-profile issues.
 - UT: Ruled against legislature on initiative power, gerrymandering, and abortion --> effort to politicize selection
 - OK: Ruled against legislature on abortion --> effort to abolish merit selection

Citing 'frustrations' with the courts, Utah Republican lawmakers eye possible judicial reforms

Senate passes bill seeking to overhaul Oklahoma's judicial selection process

BY: BARBARA HOBEROCK - MARCH 12, 2024 3:14 PM



Other Threats: Politicized Impeachment

State representative calls for impeachment of Pennsylvania Supreme Court Justice Wecht

TRIB LIVE PAULA REED WARD | Wednesday, Oct. 7, 2020 3:06 p.m.

Wisconsin Republicans Are Already Talking About Impeaching the Newly Elected Liberal Judge

Republicans have the majority needed to impeach Janet Protasiewicz, who has vowed to protect abortion rights.

Ohio Republicans discussing impeachment of Chief Justice Maureen O'Connor after map ruling

Haley BeMiller, Jessie Balmert and Laura A. Bischoff The Columbus Dispatch
Published 11:36 a.m. ET March 18, 2022 | Updated 2:32 p.m. ET March 18, 2022

A GOP analyst mentions impeaching NC Supreme Court justices. Could it happen?

BY NED BARNETT

UPDATED JANUARY 20, 2022 7:07 AM

A Conservative Leader Wants to Oust Iowa Justices Over Their Abortion Ruling

The leader of a conservative Christian group wants to kick three justices off the Iowa Supreme Court for voting against the state's strict ban on most abortions

Other Threats: Targeting Court Budgets

Alaska Gov. Dunleavy wields veto pen to attack state Supreme Court over abortion ruling

By Nathaniel Herz, Alaska Public Media - Anchorage - June 28, 2019



Alaska Gov. Mike Dunleavy speaks to a crowd in Anchorage earlier this year. (Photo by Zachariah Hughes / Alaska Public Media)

Will the Idaho Legislature be able to financially starve the courts into submission?

Legislators retaliated against the Supreme Court after it overturned a law making it harder to qualify an initiative for the ballot by denying pay raises for judges, writes guest columnist Jim Jones.

LEGISLATURE

'Like blackmail': Judiciary gets money only if Supreme Court expands

Yvonne Wingett Sanchez The Republic | azcentral.com

Published 5:17 p.m. MT April 28, 2016 | Updated 5:50 p.m. MT April 28, 2016

Other Threats: Defying Court Orders

AG to Supreme Court: Legislature will not abide court order

Darrell Ehrlick Daily Montanan

Published 11:21 a.m. MT Apr. 13, 2021

View Comments



The Joseph P. Mazurek Justice Building in Helena is home to the Montana Attorney General Library and State Library. PHIL DRAKE/GREAT FALLS TRIBUNE

Judge Rebukes Tennessee for Ignoring Order on Absentee Voting

Election officials in Tennessee caused delay and sowed confusion among voters when they did not comply with a judge's order opening up access to absentee voting during the Covid-19 outbreak, the judge said in a hearing Thursday.

DANIEL JACKSON / June 11, 2020



Chancellor Ellen Hobbs Lyle in Nashville holds a virtual hearing Thursday, June 11, 2020, over absentee voting in Tennessee during

Ohio Redistricting Commission disregards court order by failing to adopt new legislative maps

The Statehouse News Bureau | By Andy Chow

Published February 17, 2022 at 6:43 PM EST



Other Threats: Judicial Security

- Since 2015, threats against judges have risen significantly.
 - Nearly 27,000 threatening/harassing communications targeting federal courts between 2015-2022 ([Reuters Report](#))
 - 387% increase ([CRS Report](#))
 - Federal judicial security investigations doubled from 2021 to 2024.
 - Poll: 71% of judges received inappropriate communication; 56% reported being threatened ([National Judicial College](#))
 - Increase in judicial security incidents related to political cases

With threats against judges on the rise, lawmakers push judicial security package

There have been 142 threats against judges and justices in state during past year, per Wisconsin Supreme Court Marshal's Office

JANUARY 26, 2024

2022 Judicial Election Cycle Smashed Spending Records

- In 2021-22, over **\$100 million** spent in state supreme court elections.
 - Nearly twice the spending in any prior midterm cycle (inflation adjusted)
 - State records shattered in Kentucky, Montana, North Carolina, and Ohio
- In 2023, over **\$72 million** spent on two races.
 - WI: Over \$50 million
 - PA: Over \$22 million
- Record spending likely to occur in 2024.

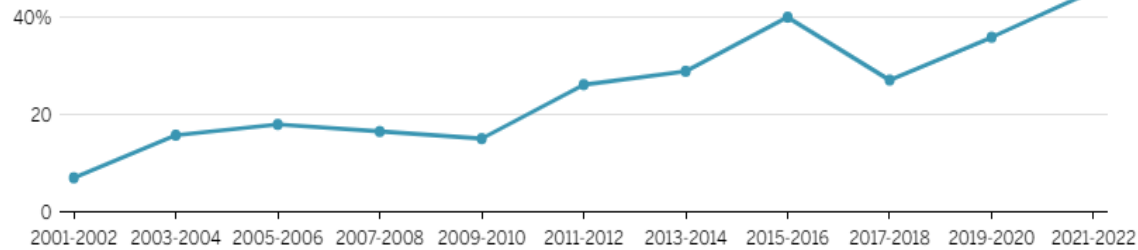
Estimated Spending on State Supreme Court Races, 2021–2022

STATE	CANDIDATE FUNDRAISING	OUTSIDE SPENDING BY SPECIAL INTEREST GROUPS	SPENDING BY POLITICAL PARTIES	TOTAL NUMBER OF SEATS ELECTED	TOTAL SPENDING
Illinois	\$10,817,754	\$17,872,996	-	3	\$28,690,750
Ohio	\$13,941,404	\$7,178,682	-	3	\$21,120,087
North Carolina	\$7,380,270	\$10,358,491	-	2	\$17,738,761
Pennsylvania	\$6,432,340	\$2,721,074	-	1	\$9,153,414
Michigan	\$3,797,533	\$2,410,078	-	2	\$6,207,611
Montana	\$1,251,708	\$2,900,928	\$478,304	2	\$4,630,940
Alabama	\$4,290,109	-	-	2	\$4,290,109
Texas	\$2,003,990	\$1,838,604	-	3	\$3,842,594
Kentucky	\$1,295,335	\$375,000	-	4	\$1,670,335
New Mexico	\$1,158,888	-	-	3	\$1,158,888
Georgia	\$1,050,622	-	-	3	\$1,050,622
Arkansas	\$939,098	-	-	3	\$939,098
Nevada	\$178,027	-	-	2	\$178,027
Washington	\$116,581	-	-	3	\$116,581
Louisiana	\$33,700	-	-	1	\$33,700
Idaho	\$10,962	-	-	2	\$10,962
Minnesota	\$450	-	-	2	\$450
Total	\$54,698,773	\$45,655,853	\$478,304	41	\$100,832,930

Role of Outside Spending in Politicizing Judicial Elections

- Outside groups increasing spending on judicial elections ([BCJ Report](#))
- Ads by outside groups more likely to be negative
- Outside groups unbound by codes of conduct

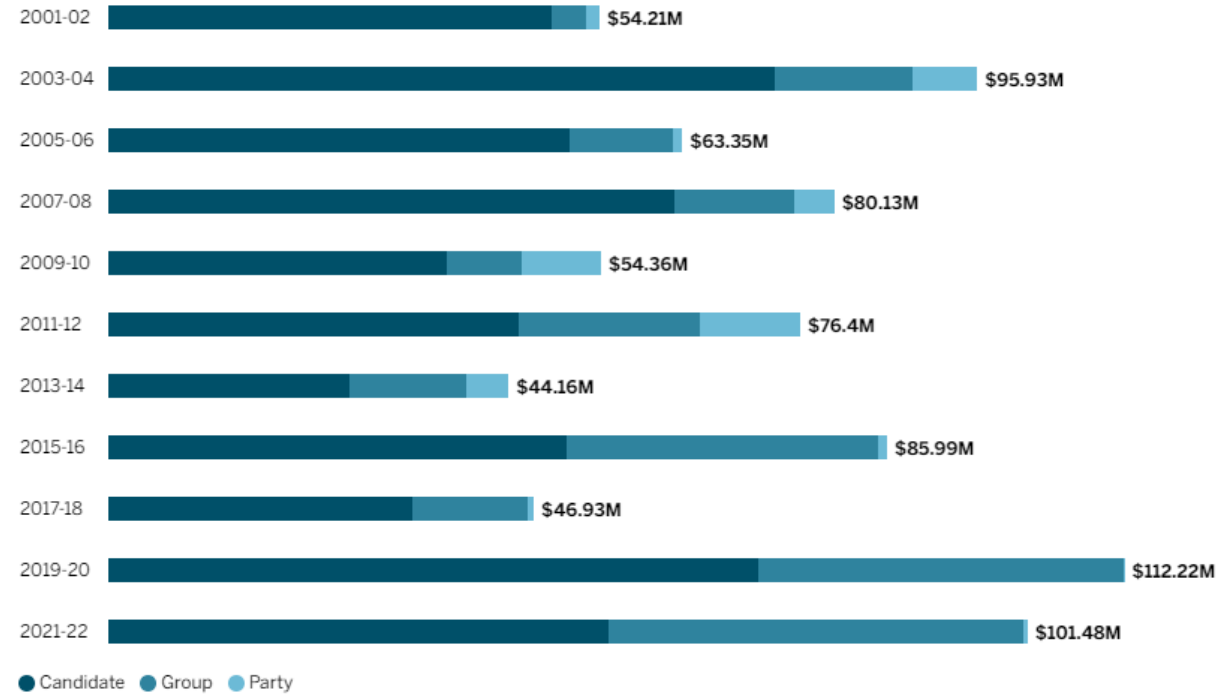
Share of Spending By Interest Groups (By Cycle)



Note: The U.S. Supreme Court issued the decision in *Citizens United v. Federal Election Commission* on January 21, 2010, in the middle of the 2010 electoral cycle. The first full cycle with *Citizens United* in place was the 2011-12 cycle. For data sources, see note in table 1.

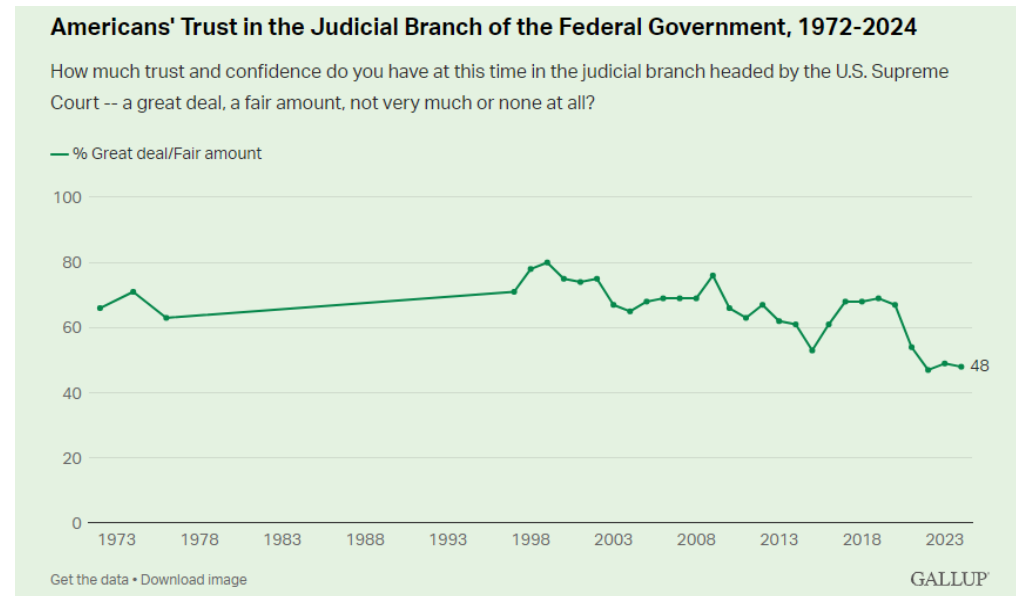
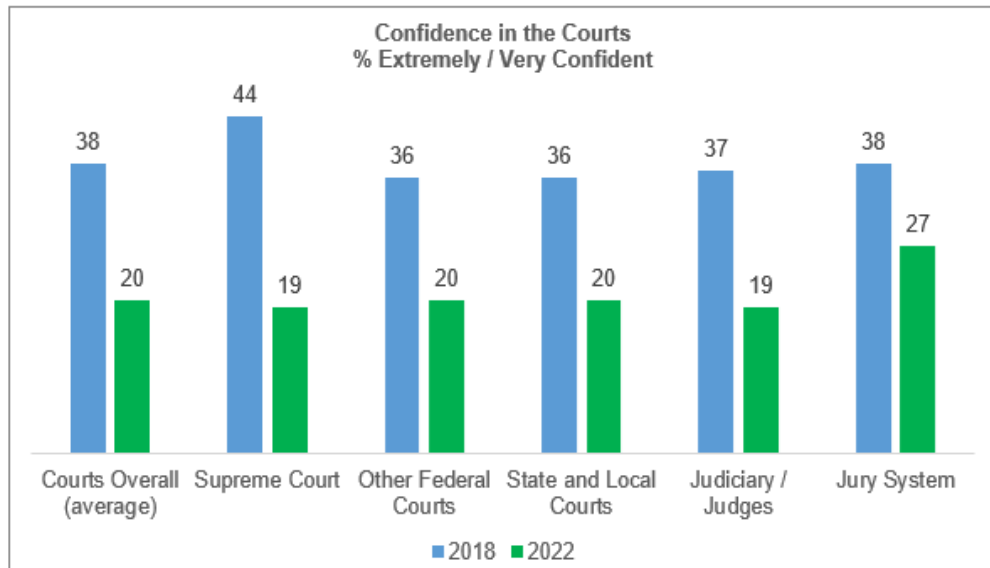
Source: Brennan Center analysis.

State Supreme Court Election Spending by Cycle (2022 Dollars)



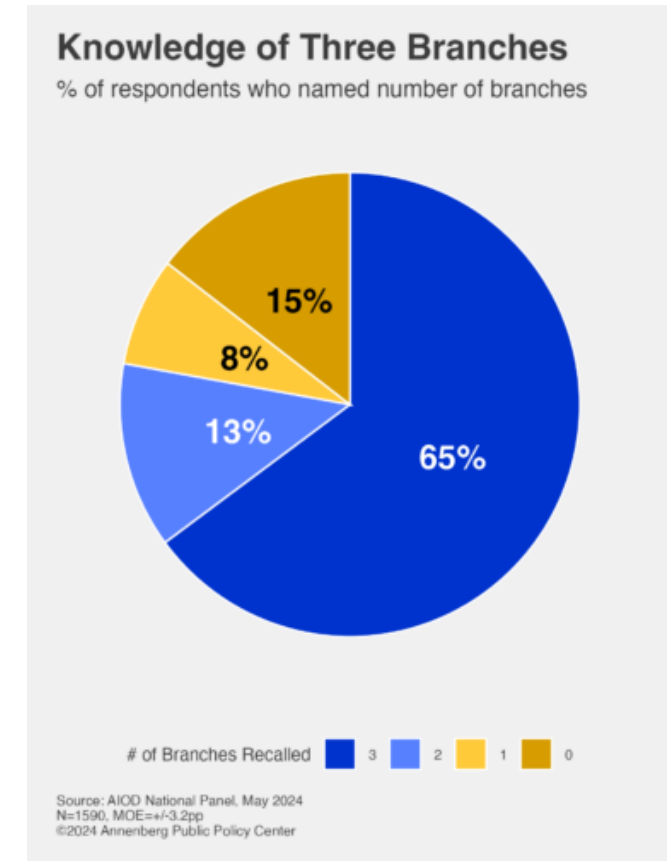
Public Confidence in Courts – Record Low

- As state courts get drawn into political fights, more Americans view courts as political. ([NCSC Poll](#))
 - 2021: 53% described courts as political
 - 2023: 61% described courts as political
- Public confidence has dropped to record lows. ([Willow Research](#); [Gallup](#))



Protecting Judicial Independence: Civic Education

- Civic Education Crisis
 - 70% of Americans failed a basic civil literacy quiz. ([U.S Chambers of Commerce Foundation](#))
 - 1/3 of Americans cannot name all three branches of government. ([Annenberg Public Policy Center](#))
 - Majority of Americans are unaware that their state has a constitution; how judges are selected; or who their state leaders are. ([John Hopkins](#))
- The Role of the Courts in Improving Civic Education
 - Example: National Association of Women Judges/Informed Voters Project



Protecting Judicial Independence: Improve Access to Justice

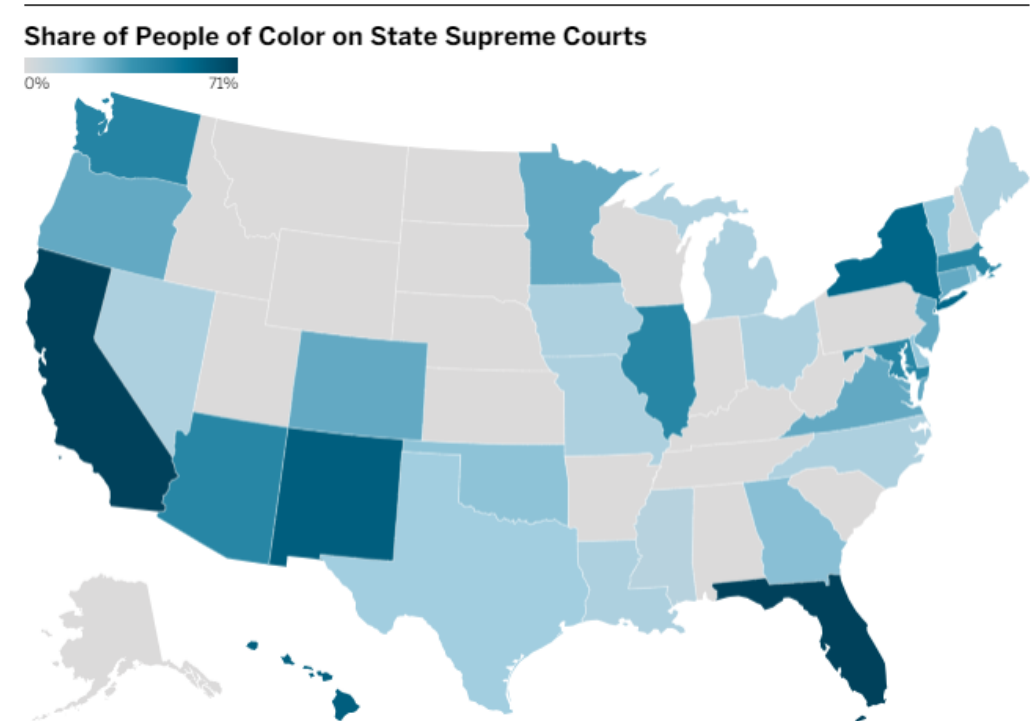
- Systemic Access to Justice Issues
 - In 2022, 92% of low-income Americans' civil legal problems went without any or enough legal help. ([Justice Gap Report](#))
 - Both parties represented by attorneys in only 24% of civil cases in state courts. ([NCSC Report](#))
 - Connection between access to justice services and belief in the rule of law
- Innovative Solutions to Improve Access to Justice
 - Example: Eviction diversion during COVID pandemic
 - Retired Chief Justice Bridget Mary McCormack: "State supreme courts . . . can convene the stakeholders who can deliver these upstream solutions and collect data about the programs so they can be continuously improved and exported to other jurisdictions."

Protecting Judicial Independence: Greater Transparency

- Transparency Issues Across State Judiciaries
 - In 29 states, access to state supreme court documents is unavailable or limited to specific documents or cases. ([North Carolina Law Review](#))
 - 5 states only let bar members access court documents and/or charge per use or per page.
 - Just 10 state supreme courts offer transparency comparable to the U.S. Supreme Court.
- Some States Are Improving
 - Ohio Supreme Court posts case announcements and has open public docket with accessible briefing.
 - Recent New Jersey [order](#) committing to publicly posting all briefs prior to oral argument at NJ Supreme Court and live streaming oral arguments in the Appellate Division.

Protecting Judicial Independence: Diversify Courts

- Stark lack of racial, ethnic, and gender diversity on state supreme courts ([Brennan Center Report](#))
 - 19 states have no justices of color.
 - 26 states have no Black justices.
 - 39 states have no Latino justices.
 - 42 states have no Asian justices.
 - Majority of supreme court justices (57%) are men.
 - 5 states with only one woman on the supreme court.
- Importance of Diversifying State Judiciaries
 - Increases public confidence in the courts
 - Improves judicial decision-making



Protecting Judicial Independence: Role of Court Professionals and Judicial Leadership

- Encourage Court Professionals and Retired Judicial Leaders to Speak Out
 - Court professionals are strong messengers to speak in favor of judicial independence.
 - Local roots and connections
 - Credible expertise and direct experience with state courts.
 - Everyday person (non-elite)
 - Unexpected messenger
 - Non-partisan; no political agenda.
 - Retired judges are trusted voices to speak in defense of judicial independence.

Learn more about state courts & constitutions



statecourtreport.org

Newsletter: go.statecourtreport.org/subscribe

Twitter: @StateCourtRpt

Threads: @state_court_report

LinkedIn: State Court Report

Additional Resources

- Legislative Assaults on State Courts in 2023: <https://www.brennancenter.org/our-work/research-reports/legislative-assaults-state-courts-2023>
- The Politics of Judicial Elections: <https://www.brennancenter.org/our-work/research-reports/politics-judicial-elections-2021-2022>
- State Supreme Court Diversity – May 2024 Update: <https://www.brennancenter.org/our-work/research-reports/state-supreme-court-diversity-may-2024-update>

Thank you!



National Association for **Court Management**

Established 1985

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