

HIGH COURTS, HIGH STAKES


How Republicans flipped America's state supreme courts

State supreme courts were once dominated by Democrats. A concerted effort by right-wing groups has changed that — with massive implications for abortion, LGBTQ+ rights and elections.





by Aaron Mendelson July 24, 2023




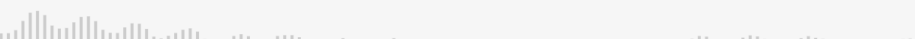
(Taylor Callery for the Center for Public Integrity)

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Integrity Out Loud
How Republicans flipped America's state supreme courts

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In 2018, the Iowa Supreme Court ruled that the state constitution included a right to abortion, finding that “nothing could be more fundamental to the notion of liberty.”

Just four years later, the court reversed itself. Iowa’s constitution does not, the justices decided, guarantee a right to abortion after all. That 2018 ruling? It had “a one-sided quality to it,” the new majority found. Iowans could no longer rely on a constitutional protection that existed just hours before.



This story also appeared in [USA TODAY](#)

The day the ruling was issued, staff at a Planned Parenthood clinic on Des Moines’ south side were preparing to perform surgical procedures. But their work ground to a halt. Staff had to inform patients already at the clinic that they couldn’t operate, as they scrambled to understand the decision. “It’s devastating,” said Jordawn Williams, the clinic manager. “It’s hard to tell patients that, it’s hard to see their reaction, it’s hard to go through that over and over and over again.”

The state constitution hadn’t changed in the four years between the state Supreme Court’s two rulings. But the justices on the bench had — and so had the role state politicians play in putting them there.

One month after the ruling, Chuck Hurley, the chief counsel of influential Iowa conservative group the Family Leader, took the stage before a sold-out convention center crowd. The gathering, which was attended by Republican Gov. Kim Reynolds, U.S. Sen. Chuck Grassley and then-Fox News host Tucker Carlson, was just over the Des Moines River from the Supreme Court. Hurley told the room that “Iowa is on the verge of limiting the barbaric practice of abortion” after the court’s decision. He added, “Governor Reynolds and our legislators played a huge role in that win — by changing the way we select judges in Iowa.”

Iowa is not alone. In less than a decade, Republican politicians in eight states have transformed their state supreme courts — altering the process by which justices reach the bench, or the size of the court. The moves have pushed the courts to the right or solidified conservative control.

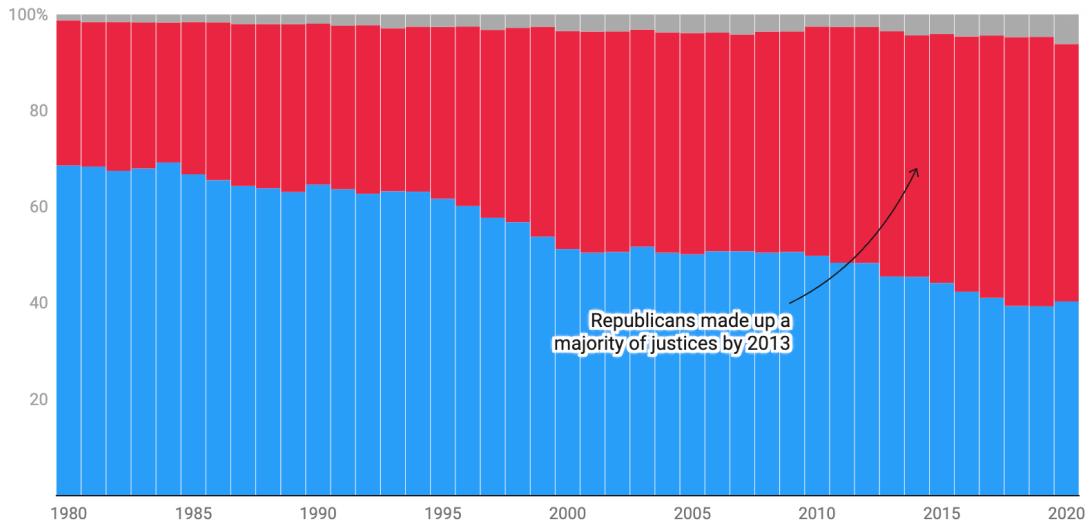
The changes take different forms. North Carolina and Ohio made their judicial elections partisan contests. Arizona and Georgia expanded the number of justices. And Iowa, Idaho, Montana and Utah granted Republican governors greater control over the process of picking justices.



State supreme court justices are increasingly Republican

In 1985, Democrats accounted for two-thirds of all state Supreme Court judges. By 2020, they had been fewer than half of justices for a decade.

Democrat % Republican % Independent %



Data omits justices where party affiliation could not be determined

Chart: Aaron Mendelson/Center for Public Integrity • Source: Brett Oliver Parker, Stanford • Created with Datawrapper

This paved the way for rulings in Iowa and North Carolina that overturned precedents and rulings from just a few years, or months, before.

But while individual rulings have attracted public scrutiny, the changes to the courts have flown under the radar. That's despite the key role that state courts, which hear 95% of all cases in the U.S., play in American democracy.

"It's hard to flip a whole state legislature. It's really expensive to win a governor's race. But it's not as hard, frankly, to turn over a state supreme court," said Michael Kang of Northwestern University.

Other Republican-led states have taken notice. In 2023, 15 legislatures considered bills to increase partisan influence in judicial selection, according to a tally by the Brennan Center for Justice at New York University School of Law.

The shifts on state supreme courts resonate far beyond the ornate chambers where justices confer and issue rulings. State constitutions often grant rights that aren't guaranteed in the U.S. Constitution, and state supreme court justices have the final say on what those are.

Civil rights, taxes, LGBTQ+ rights, labor law, policing and more — all of it hangs on which justices take the bench. This year alone, five recently reconstituted state supreme courts have heard or are due to hear cases about abortion restrictions.



What's underway now is part of a long-term project by conservatives to transform state courts, dating back to the 1980s and efforts such as Republican strategist Karl Rove's campaign to unseat liberals in Texas. It was supercharged by an Iowa campaign in 2010 to remove [three justices](#) who overturned a ban on same-sex marriage.

That election "changed the dynamic. It opened the court up as a site for political gain," said Rachel Paine Caufield, a professor at Drake University. "In Iowa, they've really done a good job of pinpointing specific changes that very few people would pay attention to, but will be very effective."

After the changes to the state's nominating commission, "there's no question that the direction of the court has shifted. It's a much more conservative court," Caufield added.

That's true nationwide, too. In 1980, just 30% of state high court justices in the U.S. were Republican, according to data compiled by Stanford researcher Brett Oliver Parker and shared with the Center for Public Integrity. (The analysis excludes justices whose party could not be determined, but keeps those who are independents.) The same data shows that by 2013, that figure crossed 50%.

This year, data from the progressive legal organization Alliance for Justice shows, over 60% of state high court justices are Republican.

That's sharply out of step with the country's political leanings. Roughly 30% of Americans told [pollsters this year](#) that they consider themselves Republican, with independents and Democrats accounting for the rest.

"All the energy on this issue is on the right," said law professor Brian Fitzpatrick of Vanderbilt University. He points to data that indicates attorneys lean left; lawyers play a key role in many states where commissions nominate judicial candidates. "It's the Republicans that are not happy with the status quo," he said.

In the states examined by Public Integrity where there has been turnover on the bench, the courts added conservatives — or replaced Republican moderates with more right-wing justices.

Politicians have come to regard courts less as a check on power than a part of the state's governing coalition, academics and activists say. In two states, more than ideology binds judges to politicians: Ohio Supreme Court Justice Pat DeWine is the son of Republican Gov. Mike DeWine, and North Carolina Supreme Court Justice Phil Berger Jr. is the son of the state's most powerful Republican politician, state Senate President Pro Tem Phil Berger.



Changing their courts

In recent years, Republican politicians in eight states have transformed their state supreme courts. The moves have pushed the courts to the right, or solidified conservative control.

state	year	change
North Carolina	2016	Adopted partisan elections
Georgia	2016	Added 2 justices, going from 7 to 9
Arizona	2016	Added 2 justices, going from 5 to 7
Iowa	2019	Changed nominating commission, giving governor greater power
Ohio	2021	Adopted partisan elections
Montana	2021	Eliminated nominating commission
Idaho	2023	Changed nominating commission, giving governor greater power
Utah	2023	Changed nominating commission, giving governor greater power

Table: Aaron Mendelson / Center for Public Integrity · Created with [Datawrapper](#)

The decisions made by justices shape the lives of residents in direct, dramatic fashion.

In Arizona, the high court stripped in-state tuition from more than 2,000 students in [DACA](#), the program that protects people brought to the country as children from deportation.

In Iowa, the court ruled that [pretext stops](#) by police — including those based partly on race — were legal in some circumstances, and that the justices lacked the authority to order regulation of the harmful nitrates flowing into Iowa rivers and fouling drinking water.

And this spring in North Carolina, a fresh Republican majority took the highly unusual step of rehearing two politically charged cases decided the previous term. The state's Supreme Court also overturned a lower court ruling that had restored the voting rights of tens of thousands of people with felonies.

For those who registered and voted after the lower court's ruling, the thought of losing the franchise was painful. "It's like they give us a taste, and then they snatch it back," said Anton Sluder, 31, who lives in western North Carolina.

Around the nation, the stakes are high. State supreme court justices, said Jake Faleschini of Alliance for Justice, "are the most important political actors in this country that no one's ever heard of."



‘The Republican Party has wised up’

States have four basic methods of selecting judges: appointment by a governor or legislature, partisan elections, non-partisan elections and nominating commissions that recommend a slate of candidates elected officials must pick from (often dubbed merit selection).

The patchwork emerged out of different moments in American history. At the country’s founding, politicians appointed many judges. In the early 1800s, states adopted elections to empower independent judiciaries. In the mid-20th century, nonpartisan elections swept across the country, an attempt to sever the connection between political machines and judges. In later decades, nominating commissions became a popular method of injecting the process with transparency and legal expertise.

Herbert Kritzer, an emeritus professor at the University of Minnesota, has studied states that changed their method of judicial selection. “In the roughly 20 years before 2000, the dominant motivation was more good government, legal professionalism, etc. Post-2000 it was very, very heavily policy, political,” he said.

Academic research has demolished the perception that judges stand apart from politics. Legal scholars Michael Kang and Joanna Shepherd have consistently found that “judges’ voting in cases tends to favor the interests of their campaign contributors in a predictable and statistically meaningful way,” as they wrote in [one paper](#).

Their [work](#) has documented that judges favor their own parties when ruling on election cases, and that “campaign contributions from the Republican Party and its allies are associated with an increased likelihood Republican elected judges will vote in favor of their party’s interests.” Their research also found that judges who receive contributions from business groups are more likely to favor business interests on the bench.

“Judges respond to incentives, and a lot of those incentives are financial ones,” Kang said in an interview. “The money does matter.”

Or, as former West Virginia Supreme Court Justice Richard Neely [said in 2006](#), “It’s very hard not to dance with the one who brung you.”

That’s not to say the details of individual cases don’t matter: Justices frequently vote unanimously — including in the many cases that don’t touch on hot-button social or political issues. Kang and Shepherd also found that judges were more likely to rule against their own party in election cases when the other party brought a strong case.





IN HIS OWN WORDS

Listen to Michael Kang of Northwestern University talk about the politics of flipping a state supreme court.

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(Photo credit: Courtesy Northwestern University Pritzker School of Law)

Notably, they found that justices rule in a less partisan manner when they're not running for reelection.

The fact that the U.S. Supreme Court [hears fewer cases](#), and has left issues like abortion up to states, has empowered state high courts. That has not been lost on legislators and governors.

"These institutions are too damn powerful for politicians to let them be independent and run amok," said James Gibson of Washington University in St. Louis. "They'll do anything to try to control them."

State elected officials who altered how judges reach the bench are often reacting to shifting political landscapes and controversial rulings. Conservative groups have actively pushed for these changes, Public Integrity found. The result is that courts have gradually trended to the right.

Democrats have rallied to support candidates in elections, like the Wisconsin Supreme Court race this spring, but have not been active in altering the methods of selecting justices. (The exception is Illinois, where a Democratic-led effort in 2021 to address population imbalances in court districts also gave the party [a leg up in judicial elections](#).)

National political organizations like the Republican State Leadership Committee have been key to the long-term project. The group unveiled an effort in 2014, dubbed the Judicial Fairness Initiative, [declaring](#) that "Republicans have had a significant amount of success at the state level. ... Unfortunately, that's running into a hard stop with judges who aren't in touch with the public."



The organization's website says it has spent more than \$29 million in judicial races across the country, in Illinois, Louisiana, Michigan, Pennsylvania, West Virginia, Wisconsin and elsewhere.

The group credited a "clean sweep" in the 2022 elections in North Carolina and Ohio to its spending, [saying](#) that it was working to "ensure that the redistricting fights ahead in those states are ruled on by strong conservatives." The RSLC did not respond to requests for comment.

The RSLC spent over \$1 million in 2012 to boost North Carolina Supreme Court justice Paul Newby; in 2023, Newby [penned a ruling](#) that hands legislative Republicans near-unlimited power to gerrymander political districts.

Conservative megadonors have been paying attention, too. In an invitation to a secret 2010 [meeting](#) convened by billionaire Charles Koch, the agenda included a discussion of state judicial elections as an opportunity "for advocates of free enterprise to have their voices heard." In Iowa in 2019, a Koch-aligned group backed changes to the state's nominating commission, running Facebook ads that said, "Iowa's judicial branch is controlled by an oligarchy of attorneys. Don't you deserve a voice?"

The Federalist Society, which helped elevate conservatives to the U.S. Supreme Court, also has ties to dozens of state supreme court justices. A [2019 review](#) by Billy Corriher of the People's Parity Project linked a majority of state supreme court justices in eight states to the group. "The Federalist Society is very influential at the state level," Corriher said.

Vanderbilt's Fitzpatrick has done [research](#) showing that nominating commissions and nonpartisan elections produce more liberal judges, that partisan elections produce more moderate judges, and that appointments result in more conservative judges.

Fitzpatrick, who clerked for former Supreme Court Justice Antonin Scalia, favors appointments, the most reliable path to conservative justices. He said a switch Tennessee made in 2014 to an appointment system was "in light of this emerging research," and the legislator who pushed for changes in Iowa cited Fitzpatrick's work.

"The Republican Party has wised up to the fact that some of these selection methods are producing courts that are out of step with their states," Fitzpatrick said.



Backlash in the heartland

Iowa's Supreme Court has been notably progressive dating back to its first ruling, in 1839. That case established that a Black man who had escaped slavery in Missouri was a free man in Iowa.

But progressive rulings have provoked furious conservative backlash twice in the state in recent decades.

In 2009, the court unanimously ruled that gay couples have a right to marry, making Iowa one of only three states in the country where same-sex marriage was legal.



Iowa Supreme Court justices (Courtesy of Iowa Supreme Court)

After the ruling, legislators kicked around proposals to expand the size of the court, set term limits and change the nominating system, though none passed.

Conservatives won a different sort of victory: Iowans voted out three Iowa Supreme Court justices who were on the ballot in retention elections in 2010. Before that, no Iowa high court justice had ever lost such an election.

Justices again angered conservatives with their 2018 decision finding that the Iowa Constitution contained a fundamental right to abortion, and striking down a 72-hour waiting period for the procedure.

The next year, Iowa Rep. Steven Holt, a Republican, introduced a bill overhauling the state's nominating commission. The group recommends a slate of candidates that the governor is required to select a justice from. Its membership was balanced: eight people chosen by the governor and eight by the state bar association, with a member of the state Supreme Court serving as the chair.

The nominating commission was a product of the state’s 1962 constitution. Typically, it would require a constitutional amendment to alter the commission. But an [obscure provision](#) stated that, after 1973, the bar for changing the nominating commission would be lowered so a bill would be enough.

The language had no practical impact for decades — until Republicans seized on it in 2019. Holt called the provision “a very strange escape clause.”

His original idea was to completely remove members of the state bar from the commission. That met the approval of Vanderbilt’s Fitzpatrick, who wrote an op-ed in support. The Koch-aligned Americans for Prosperity pushed legislators to support Holt’s bill, and the Judicial Crisis Network, the conservative legal organization tied to the Federalist Society, launched [a website](#) that told Iowans that “our courts are soft on crime, big on abortion, and a gold-mine for trial lawyers.”

But the bill drew significant opposition from former justices, a former Republican state chairman and a host of advocacy groups — from the Sierra Club to legal organizations to the Iowa City Area Chamber of Commerce.

“Let’s face it, that’s what this is about: They want to get conservative judges on the Supreme Court so they hopefully will overturn some of the rulings that our majority party doesn’t like,” Democratic Rep. Mary Wolfe said in a TV debate.

During the 2019 session, Holt’s proposal appeared to lose momentum. But on the second-to-last day of the session, it reemerged — this time attached to an appropriations bill securing funding for flood recovery.

The new version no longer completely cut out the state bar from the nominating commission, but it still handed majority power to the governor. It mimics a change Florida made in 2001 that has [reshaped that state’s high court](#).

“This is not a power grab, this is a majority party in this chamber exercising our authority,” Holt said on the floor of the statehouse. “A little more voice



Iowa Rep. Steven Holt (Courtesy Iowa Legislature)

to the governor is important because that means a little more voice for the people.”

The bill passed, and Gov. Kim Reynolds signed it.

“They wanted to empower a Republican governor. And this was one way to do it,” said Drake University’s Caufield.

Two months after signing the bill, Reynolds boasted that “the tide is turning in Iowa’s Supreme Court. In just two short years, we’ve moved the needle from left to right.” Reynolds has since put her imprint on the court, selecting three new justices.



Iowa Gov. Kim Reynolds (Mario Tama/Getty Images)

A law firm that tracks the court’s rulings [said](#) that it seems to have “less appetite,” after the addition of Reynolds’ appointees, for finding the Iowa Constitution grants rights beyond the U.S.

Constitution. In [surveys](#) conducted by the state bar, Iowa lawyers have given the court’s justices declining marks for whether they decide cases “on basis of applicable law and fact, not affected by outside influence.”

The bench is now fully made up of Republican appointees. Four of the five justices who were in the majority in finding a constitutional right to abortion in 2018 were no longer on the bench four years later, when the court removed that right.

The 2022 case’s conclusion also allowed implementation of a 24-hour waiting period for abortions, which was passed by the legislature after the court struck down the 72-hour waiting period.

“It was certainly a surprise to many to see such a reversal of rights in such a short period of time,” said Mazie Stilwell, the public affairs director for Planned Parenthood in Iowa, which was a party in both cases. She said the change in the nominating commission “gave tremendous leeway to Governor Reynolds to be able to really create the courts that she wanted to see.”

Stilwell said the decision would be felt most acutely by rural residents, lowans of color and poor residents. It forced many to delay care. Second trimester abortions at Planned Parenthood locations in the upper Midwest rose by 40%, Stilwell said, due to new restrictions.

The court heard another abortion case in 2023, which sought a ban on abortions after six weeks. Justices deadlocked in a 3-3 ruling in June.

“This lack of action disregards the will of Iowa voters and lawmakers who will not rest until the unborn are protected by law,” Reynolds said after the ruling. The president of the Family Leader said that the three justices who ruled against the abortion restrictions “should resign, be impeached or be ousted.”



Pastor Michael Shover of Christ the Redeemer Church in Pella, left, argues with Ryan Maher, of Des Moines, as protestors clashed in the Iowa State Capitol rotunda, while the Iowa Legislature convenes for special session to pass six-week ‘fetal heartbeat’ abortion ban, Tuesday, July 11, 2023. (Zach Boyden-Holmes/The Des Moines Register)

In July, Reynolds called a special session of the legislature. Since the legal case concerned procedural issues, Iowa Republicans passed a nearly identical six-week ban, which Reynolds signed into law on July 14. It’s likely the high court will have the final say on the restrictions.

In another 2023 decision, justices ruled that Iowans could only seek monetary damages from the government in situations where the legislature had explicitly allowed it. That overturned a precedent set by the court in 2017, removing another constitutional right.

Two years after Iowa made its changes, state politicians in Montana went after their own nominating commission. There, Republican legislators completely abolished it. The state has nonpartisan elections, but now the governor — himself a Republican — has nearly unchecked power to appoint judges to open seats, though the state Senate still plays a role in confirming certain appointments.

As in Iowa, some Republicans came out against the changes. Former Montana attorney general and governor Marc Racicot wrote an editorial stating that the bill would consolidate power “solely in the hands of one person — the governor — who could appoint any lawyer with zero regard for his or her qualifications, experience, integrity, record or judicial disposition.” Proponents of the bill [argued](#) that the status quo was already partisan.

“It felt like there was either tacit or explicit permission to really hyperpartisanize the courts in ways that previously had been taboo,” said Alex Rate of the ACLU of Montana.

The high court has continued to frustrate Republicans by striking down laws making it harder to vote and limiting abortion. That’s because there have been no vacancies for the governor to fill. Yet.

“Where the court fits into the political evolution of Montana is an open question,” the University of Montana’s Lee Banville said.

Controlling the third branch

In two states, Republican politicians eyed their state supreme courts and decided the solution was to expand them.

While adding justices to the U.S. Supreme Court has been political kryptonite for nearly a century, Arizona and Georgia did just that at the state level in 2016. The two states are separated by different climates, political cultures and 1,300 miles, but both have been trending purple in recent years and have undergone significant demographic change.

Adding justices gave Republicans a chance to entrench a majority in Arizona that will persist long after they ceded the governor’s mansion to a Democrat in 2022. In Georgia, it created an opportunity to end a then-current majority of Democratic appointees.

“At the state level, conservatives have been packing their courts for years,” said the Brennan Center’s Douglas Keith.





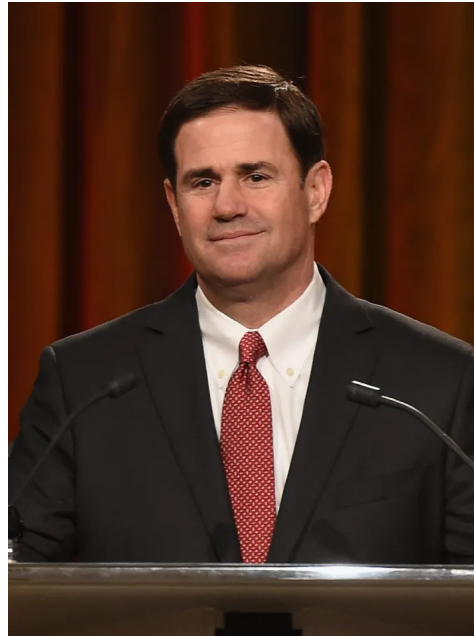
“At the state level, conservatives have been packing their courts for years.”

— DOUGLAS KEITH, OF THE BRENNAN CENTER

J.D. Mesnard, the Arizona representative who sponsored the legislation to expand that court from five to seven seats, admitted the party affiliation of the governor was on his mind when he spoke at a committee hearing in 2016. “I’ll just candidly say if there were [a] different person appointing, I might feel less comfortable,” he said.

All five of the state’s justices opposed the change, but Mesnard’s bill passed without Democratic support.

By 2019, Republican Gov. Doug Ducey [had appointed a majority](#) of the Supreme Court, partly thanks to the two new seats on the bench he was able to fill. In 2020, he [set the record](#) for judicial appointments by an Arizona governor.



Arizona Gov. Doug Ducey (Michael Buckner/ Getty Images for Friars Club)

Not everything came easy: Ducey had to maneuver in 2019 to push through a candidate for the high court that the state’s nominating commission [initially rejected](#), [replacing four members of the commission](#) with enough sympathetic votes to recommend conservative attorney Bill Montgomery.

Ducey was explicit about the role conservatives should play in the courts. At a Federalist Society event in 2019, Ducey said he had recently spoken with co-chairman [Leonard Leo](#) and told him “the Federalist Society has now fixed the judicial branch.”

Arizona’s court already had a majority of Republicans, but the expansion bolstered it and gave the bench a libertarian bent. “It’s not just that we’ve expanded the court, but very intentionally, I think, put much more conservative, ideological people on the court,” said David Lujan, a former Democratic state senator who commented while president of the Children’s Action Alliance. He now heads an agency in Gov. Katie Hobbs’ administration.





Guests in the audience await the arrival of U.S. Vice President Mike Pence during the Federalist Society's Executive Branch Review Conference at The Mayflower Hotel April 25, 2023 in Washington, DC. (Drew Angerer/Getty Images)

Hobbs will have a chance to put her imprint on the courts, but it's unlikely the high court will be made up of a majority of Democratic appointees anytime soon.

Mesnard, now a state senator, said he wanted to spread out power among a greater number of justices. "I was just forthright with the fact that you really can't separate the political implications from a decision like that," he said. "There was just no way to." Mesnard sponsored other bills to add supervisors to populous counties, create a lieutenant governor and add seats to the legislature.

Since Arizona expanded its bench, the Supreme Court has ruled that voters can't repeal tax cuts enacted by the legislature and blocked a ballot measure passed by Arizona voters to bolster funding for K-12 schools. "Our public schools have a billion dollars less in revenue each year without that funding," said Lujan, who helped write the measure.

A third ruling denied in-state tuition to students receiving DACA, substantially increasing the cost of attending the state's public colleges and universities for 2,000 students.

"I know for a fact that people had to drop out," said Karina Ruiz of the Arizona DREAM Act Coalition. "I don't know that the Supreme Court in the state of Arizona realized the real harm that they caused, with this decision, in people's lives."

The impact was deeply felt at the Maricopa County Community College District, the defendant in the case. The district counted 574 DACA recipients in its student body in spring 2018, the semester that the Supreme Court's ruling came out. By fall of 2019, that number had fallen to just 115, a drop of four-fifths.

Four years after the ruling, Arizonans passed a ballot measure that will allow many non-citizen high school graduates to receive in-state tuition going forward.

In 2016, the year Arizona added two members to its Supreme Court, Georgia did the same, expanding its bench from seven to nine justices. Advocates for the change argued that the state's growing population and economy necessitated additional justices to help bring down the workload.

The court's growth meant that then-Gov. Nathan Deal would have the opportunity to appoint a majority of the bench during his term. (Georgia has judicial elections, but in practice most judges are initially appointed by the governor.) The bench flipped from a majority of Democratic appointees to a majority of Republican ones.

"If you look at Georgia in 2016, there was a Republican supermajority in the legislature. There was a Republican in the governor's mansion," said Georgia State University's Michael Fix. "This was their way to control the third branch of government."

Georgia's Supreme Court heard a case on a six-week abortion ban in March. A ruling is expected later this year.

In another Republican-controlled state, Ohio, legislators were dissatisfied with nonpartisan general elections chipping away at a Republican majority on the high court, which had shrunk from 7-0 to 4-3 in recent years. So they proposed in 2021 to make elections partisan.

In debates over the bill, Republican state Sen. Theresa Gavarone called nonpartisan judicial elections a "ruse." Sitting Supreme Court Justice Pat



DeWine, the son of the governor, penned an op-ed supporting the change. Echoing arguments made in North Carolina, DeWine wrote that “rather than hiding party affiliation from the voters, we are far better served by trusting voters with the information and allowing them to make their own decisions.”

While Republicans had maintained a majority on the Ohio Supreme Court, it was close enough that a single vote could swing a case. Indeed, in a series of 2022 rulings, Republican Chief Justice Maureen O’Connor sided with Democrats on gerrymandered political maps.

O’Connor was forced to retire due to age limits. Republicans swept the 2022 races, the first with a partisan label on the ballot. Observers expect the court’s new members will not share O’Connor’s independent streak.

Adding partisan labels “encourages the candidates and voters to think about these justices as partisan actors,” said Common Cause Ohio’s Catherine Turcer. “And that’s a real problem when it comes to wanting an independent, impartial judiciary.”



Ohio Republican Supreme Court Justice Pat DeWine (Andrew Spear/Getty Images)

Lawrence Baum, a political science professor at the Ohio State University, said it’s unclear precisely how the new justices will vote. “But there’s every reason to think that they will be reliable on ideological issues, as well as partisan issues. We’ll just have to wait and see just how reliable they are.”

The wait may not be long. The justices will hear a case concerning a six-week abortion ban this term.

And in June, the four Republican justices [sided with](#) Republican legislators seeking to schedule a ballot initiative in August. The measure would increase the threshold for passing future initiatives to 60 percent — and would make it significantly harder for voters to add a right to abortion to the Ohio Constitution with a measure on the ballot in November.

More states lining up to change their courts

Utah and Idaho are the latest states to the party, with each changing how justices reach the bench in 2023.



Utah's move followed major losses for conservatives at the high court, which had blocked laws banning nearly all abortions and stopping transgender girls from playing high school sports.

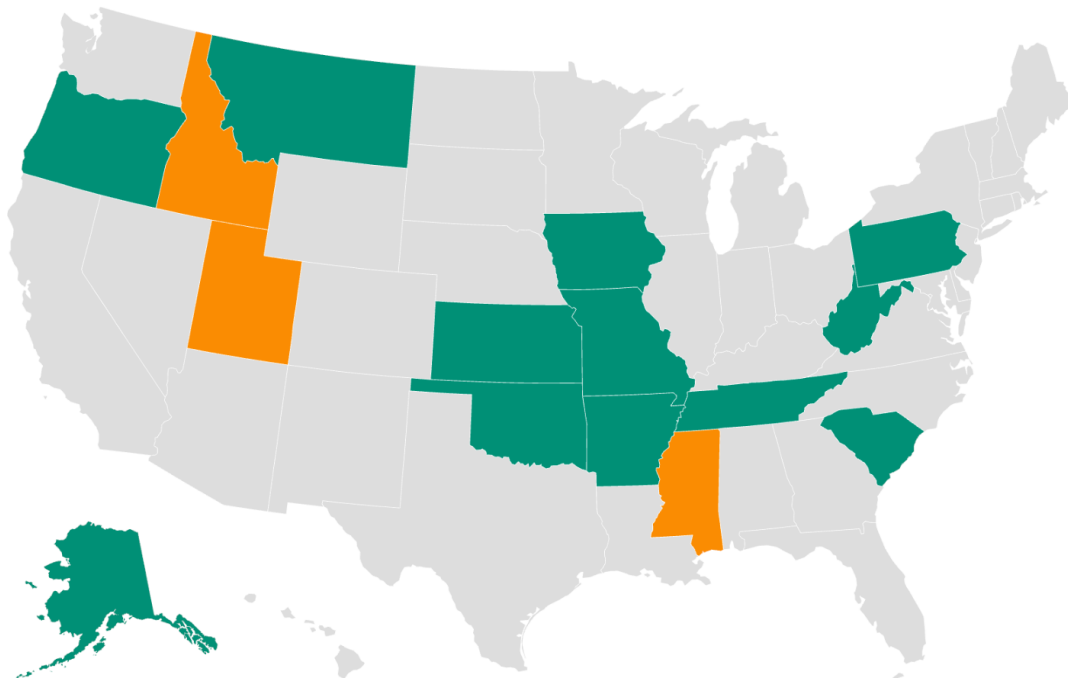
The state's new law reshapes Utah's nominating commission, handing the governor greater power and stripping the state bar of any input. The bill was sponsored by a state senator whose father runs the largest eviction law firm in Utah, and who had [previously introduced legislation](#) that would allow such firms, among others, to avoid unfriendly judges.

"There's no longer any attempt to at least have different voices heard on the nominating commission," said Erik A. Christiansen, president of the Utah State Bar. The bill also removed a requirement that Democrats play a role on the commission. "That's a pretty strong indicator that they're going to appoint more people who are strictly Republicans," Christiansen said.

2023 legislation sought to change state courts

Over a dozen state legislatures considered legislation to change state court systems in 2023. In most places, bills didn't pass – but could signal legislators will try again in the future.

■ Bills proposed but not passed ■ Passed



Created with [Datawrapper](#)

State	Proposed change	Did it pass?
Alaska	Increase partisan influence on judicial commission (HB 24 / HB 34 / HB 82 / SB 31)	No
Arkansas	Make judicial elections partisan (HJR 1009 / SJR 20)	No
Idaho	Increase partisan influence on judicial commission (S 1148)	Yes
Iowa	Increase partisan influence on judicial commission (SF 171)	No
Kansas	Increase partisan influence on judicial commission (HB 2357)	No
Mississippi	Authorize partisan appointments (HB 1020)	Yes
Missouri	Increase partisan influence on judicial commission (SB 482 / SJR 31)	No
Montana	Make judicial elections partisan (HB 464 / HB 595 / SB 200 / SB 302)	No
Montana	Increase partisan influence on judicial commission (SB 431)	No
Montana	Authorize partisan appointments (HB 915 / SB 372 / SB 72)	No
Oklahoma	Make judicial elections partisan (SB 1050)	No
Oklahoma	Increase partisan influence on judicial commission (HJR 1041 / SJR 18 / SJR 6)	No
Oregon	Submit ballot measure gerrymandering courts to voters (HJR1)	No
Pennsylvania	Make judicial elections partisan (HB 432)	No
South Carolina	Increase partisan influence on judicial commission (H 3022 / H 3447 / H 4180 / H 4182 / H 4427 / S 130 / S 178 / S 248 / S 444 / S 477 / S 693)	No
Tennessee	Make judicial elections partisan (HB 262 / SB 405)	No
Utah	Increase partisan influence on judicial commission (SB 129)	Yes
West Virginia	Make judicial elections partisan (SB 280 / SB 725)	No

The analysis looked at bills that affected state court systems, including lower courts

Table: Aaron Mendelson / Center for Public Integrity • Source: Brennan Center • Created with [Datawrapper](#)

In neighboring Idaho, Republican legislators were seething after the state Supreme Court [struck down a law](#) in 2021 that made it more difficult for citizens to place an initiative on the ballot.

This year, legislators passed a bill to transform the state’s nominating commission. As in Iowa and Utah, they granted more power to the governor and weakened the bar’s influence. Under the new structure, the governor will have a role in choosing eight of the commission’s nine members.

State Sen. Abby Lee, who introduced the bill, said during debate, “This is a change to wrest a little bit of influence from the state bar. I admit that. I am not against the bar, but I do think they have had an outsized influence.”

Former Idaho Supreme Court Chief Justice Jim Jones could hardly believe that line of reasoning. “Well, she’s dead wrong,” he told Public Integrity.



Jones is concerned about the future of the state’s high court. He said political affiliation had only rarely factored into court rulings when he was a judge, but recent changes in Idaho could lead to it resembling “some other states where they have judiciaries that are essentially arms of one or the other parties,” he said, citing North Carolina. Jones, a former Republican attorney general, deemed recent proposals to reshape courts in Idaho “thinly-veiled payback” for the Supreme Court’s ruling on initiatives.

In many states, plans to tilt courts to the right percolate for years before becoming law. This year, legislators in over ten states introduced ultimately unsuccessful bills that sought to make judicial selection more partisan, according to an analysis by the Brennan Center — proposals that could come back in future sessions.

Moving to partisan elections has been especially popular, with Tennessee, Pennsylvania, Montana, Arkansas, Oklahoma and West Virginia all considering legislation to do that. “State legislators are taking lessons from what’s happened in Ohio and North Carolina,” said Brennan’s Keith.

Other states looked at increasing partisan influence over nominating commissions or in judicial appointments. Nearly all states that considered changes are run by Republicans.

But it’s not only the states making changes where ripple effects could be felt.

State supreme court justices are poised to play a decisive role in the 2024 election. Legal scholars point out that such courts have unique authority over voting.

“Most law when it comes to elections is state law,” said Rebecca Green of William & Mary Law School. In 2022, Wisconsin’s Supreme Court [banned drop boxes](#), and Pennsylvania’s high court [ruled](#) that undated mail ballots could not be counted.

After the 2020 presidential election, attorneys tied to the Trump campaign and its allies filed [76 legal cases](#), the overwhelming number of them in state

Project team

Reporters: Aaron Mendelson, Ileana Garnand and Pratheek Rebala

Editors: Jamie Smith Hopkins and Jennifer LaFleur

Fact-checking: Peter Newbatt Smith

Audience engagement: Lisa Yanick Litwiller, Janeen Jones, Ashley Clarke, Vanessa Lee and Charlie Hsing-Chuan Dodge

Audio: Christine Herman



courts, and many challenging the outcome. Trump and his allies lost nearly every case. But not every ruling was unanimous.

With different circumstances and justices, state supreme courts could deliver different decisions.

“These courts are going to decide the next presidential election,” Washington University’s Gibson predicted. “I don’t think there’s any doubt whatsoever about that. And so everybody knows that, and everybody’s gearing up.”

Public Integrity journalist Ileana Garnand contributed to this article.

