



Dear {{FirstName or 'Friend'}},

As we near the end of 2023, we look back on the year's highlights for state supreme courts and celebrate the elevation of a number of attorneys with backgrounds in advocating for underserved communities to high courts around the country. Justice [Kyra Harris Bolden](#), a former criminal defender and state legislator, was sworn in to the Michigan Supreme Court in January, and [Michael Noriega](#), a former immigration attorney, was confirmed to the New Jersey Supreme Court in June. In September, former labor attorney [Aruna Masih](#) was appointed to the Oregon Supreme Court, and [Allison Riggs](#), a former voting rights attorney, was appointed to the North Carolina Supreme Court. Additionally, two associate judges already on state high courts were promoted to chief of their court this year: [Rowan Wilson](#), a former civil rights litigator, was elevated to Chief Judge of the New York Court of Appeals, and [Natalie Hudson](#), a former legal aid attorney, to Chief Justice of the Minnesota Supreme Court.

We know that the presence of judges like these on state supreme courts has a profound impact on the outcomes of the cases heard by these courts. The [People's Parity Project](#) recently released a [report](#) that assessed the professional diversity of the justices of the Arizona Supreme Court, finding that 86% of the justices on the state's highest court have backgrounds working for powerful institutions like the government and large corporations. The report also highlighted [research](#) showing that judges' professional backgrounds can affect how they rule on cases. This can be seen in practice, as a recent [analysis](#) from [New York Focus](#) shows that the New York Court of Appeals has increasingly ruled in favor of criminal defendants since Judge Wilson was elevated to Chief Judge and Associate Judge [Caitlin Halligan](#) joined the court. When high court judges recuse themselves from hearing a case, Chief Judge Rowan has been selecting lower court judges to substitute based on their seniority rather than their political leanings, as was the practice of his predecessor. This new system is allowing more judges with a greater variety of professional backgrounds to weigh in on some of the cases heard by the state's highest court, and has contributed to several recent court decisions to send notable criminal cases back to lower courts for reconsideration.

These reports reinforce AFJ Action's mission of supporting the election, appointment, and confirmation of movement judges like those we're highlighting here to state

benches across the country. Take a look back at our own [2023 State of the State Supreme Court Report](#) to learn more about the progress we've made this year, and stay tuned for updates as we prepare to release our 2024 report!

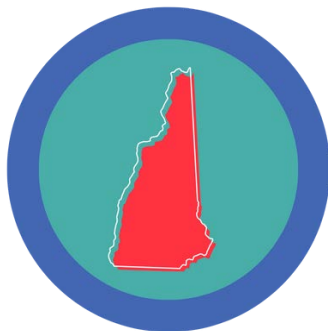


Ethics Update

Justice Earls appeals decision to the Fourth Circuit

Since our last issue, in her case challenging the North Carolina Judicial Standards Commission's investigation of her, Justice Earls [has appealed](#) US District Court Judge Olsteen's decision denying an injunction against the Judicial Standards Commission's investigation to the Fourth Circuit Court. However, there is no deadline for Olsteen to respond to Justice Earls' injunction request. Additionally, the Judicial Standards Commission is expected to announce if they intend to move forward with a formal investigation against her. Read about how this attack on Justice Earls began along with other conservative lawmakers' attacks against progressive judges [here](#).





New Hampshire Supreme Court justice retires, replacement awaiting confirmation

New Hampshire Supreme Court Justice Gary Hicks **retired** on November 30 after reaching the mandatory retirement age of 70. Hicks served 18 years on the supreme court.

To fill the vacancy created by Hicks' retirement, Governor Sununu **nominated** New Hampshire Circuit Court Judge Melissa Beth Countway to the court. In order to join the supreme court, Judge Countway **appeared in a public hearing**, which was held on November 29. While many applauded Countway's nomination, one pro-democracy coalition **shared concerns** over how her nomination may impact reproductive freedom in the state, as Countway declined to say how she would vote on issues of reproductive rights. Following the hearing, she must be confirmed by the Executive Council. The council is expected to hold a vote on December 20.

Countway began her legal career as a clerk on the New Hampshire Supreme Court. Following completion of her clerkship, she went into private practice. In 2010, Countway became the police prosecutor at the Alton Police Department, representing the state in all prosecutions coming from the police department. She then served as the Belknap County Attorney from 2011 to 2017. She has served on the circuit court bench since 2017.



Massachusetts Governor Healey gets second nominee on supreme court

Justice Lowy on the Massachusetts Supreme Court **will step down** from the court in February, six years prior to mandatory retirement. Lowy's retirement marks the second opportunity for Governor Healey to name a justice on the highest court.

Healey has yet to name a nominee for the vacancy created by the departure of Justice Elspeth Cypher, who retired earlier this year also before reaching the mandatory retirement age. Healey will get to make her mark on the high court after former Governor Baker nominated every sitting justice on the court.



Two open Montana Supreme Court seats, including Chief Justice, on 2024 ballot

Next year's race for two seats on the Montana Supreme Court has begun to take shape after the two sitting justices whose terms expire in 2024 both **announced** they will not seek reelection. Associate Justice **Dirk Sandefur** and Chief Justice **Mike McGrath** will both retire rather than seek another eight-year term on the state's highest court, meaning there will be two open seats on the ballot in 2024.

Judicial elections in Montana are nonpartisan, and a primary election in June 2024 will determine which two candidates will advance to the November general election race for each seat.

Broadwater County Attorney **Cory Swanson** and former federal magistrate court judge **Jerry Lynch** have **announced** they will run for the Chief Justice seat, while district court judges **Katherine Bidegaray** and **Dan Wilson** will seek the seat being vacated by Justice Sandefur. Former state auditor John Morrison had also previously announced he would run as a candidate for Chief Justice, but later ended his campaign and **endorsed** Lynch's candidacy.



Candidates set for 2024 Ohio Supreme Court races as partisan designation requirement challenged in federal court

Three seats on the Ohio Supreme Court will be on the ballot in November 2024, and both parties have **announced** the candidates who will run with their designations for the seats, which is required in Ohio after a law **enacted** in 2021 that requires appellate and supreme court candidates to run with their partisan affiliations labeled on the ballot.

Three sitting justices whose terms are expiring in 2025 will run for reelection to their seats: Justice **Michael Donnelly** and Justice **Melody Stewart**, both Democrats; and Justice **Joe Deters**, a Republican who was appointed by Gov. Mike DeWine to fill a vacancy on the court in January 2023. Also running as Republicans are Hamilton County Common Pleas Court Judge **Megan Shanahan** and Franklin County Common Pleas Court Judge **Dan Hawkins**, while Judge **Lisa Forbes**, a judge on the 8th District Court of Appeals, will run as a Democrat. Justice Deters must decide before the filing deadline on December 20 if he will run to fill the remainder of his current term, expiring in 2024, or run against one of his colleagues for a full six-year term, before the candidate matchups can be determined.

A majority of seats on the Ohio Supreme Court have been controlled by Republicans since 1986. Republicans currently hold four of the seven seats on the court, and with three seats on the ballot in 2024, the balance of the court could shift from Republicans to Democrats for the first time in nearly 40 years. Possibly affecting the landscape of the race further is a **lawsuit** filed by another sitting justice, **Jennifer Brunner**, which

challenges the constitutionality of the new law requiring partisan designations and may affect whether the six candidates running for seats on the Supreme Court next year will be required to run with their partisan affiliation labeled.



Former Republican Attorney General Brad Schimel enters 2025 Wisconsin Supreme Court Race

Former Republican Attorney General Brad Schimel **announced** he will run for a seat on the Wisconsin Supreme Court, becoming the first conservative candidate to announce a challenge to liberal Justice **Ann Walsh Bradley**, whose third term on the state's highest court will expire in July 2025.

Justice Bradley, who is the longest-serving justice on the bench, **announced** this spring that she would seek a fourth term on the Supreme Court, where she was first elected in 1995 and reelected in 2005 and 2015. Prior to joining the state's highest court, she worked in private practice and as a judge on the Marathon County Circuit Court. **Schimel** worked as a Waukesha County prosecutor for 25 years and served one term as Wisconsin Attorney General before losing his reelection campaign in 2018 and being appointed to the Waukesha County Circuit Court by then-Gov. Scott Walker.



Agency Deference

Montana

MACO, et al. v. State of Montana, et al.

In a dispute between the Montana Department of Revenue and the Montana Association of Counties, the state's highest court unanimously determined that the department's interpretation of its own authority to determine the rate at which the counties must levy property taxes on their residents is consistent with the Montana Constitution, the intent of the legislature, and the state's decades-long tradition of deferring to the authority of state agency decision-making.

COVID Response

Indiana

[*Mellowitz v. Ball State University, et al.*](#)

In a unanimous decision, the Indiana Supreme Court ruled that a law passed retroactively by the state's general assembly in 2021 prohibiting students from filing class action complaints against state universities for actions they took to mitigate the spread of COVID-19 does not violate the state's constitution. The suit asked the court to block the law so a student could file a class action claim on behalf of nearly 20,000 students seeking refunds on payments made to the university toward tuition and other fees before it closed campus facilities and moved classes online in the spring of 2020. The court's ruling means those students seeking to sue state universities for refunds must file individual claims.

Environmental Protections

Montana

[*MEIC v. Westmoreland Rosebud Mining*](#)

The Montana Supreme Court unanimously ruled to halt the expansion of the Rosebud Coal Mine after environmental groups sued to block the expansion, citing concerns that it would increase the salinity of a creek that flows into the Yellowstone River and potentially jeopardize the habitats of aquatic species in both bodies of water.

Pedestrian & Cyclist Rights

Illinois

[*Galarza v. Direct Auto Insurance Co.*](#)

The Illinois Supreme Court ruled unanimously that auto insurance policies cannot require a person to be in an insured motor vehicle to qualify for coverage after they have been injured by an uninsured motorist, declaring that auto insurance policies including such language violate both the state's insurance code and public policy. The decision came in a suit filed against an insurance company by one of its policyholders after the company denied a claim made by the policyholder, whose son was hit by an uninsured driver while riding his bicycle.

Police Accountability

New Hampshire

[*ACLU of New Hampshire v. New Hampshire Division of State Police*](#)

In a 4-1 decision, the New Hampshire Supreme Court ruled that the Division of State Police must release the personnel file of a trooper who was fired after he lied repeatedly about his use of illegal search methods, causing an innocent woman to spend two weeks in jail and resulting in a lawsuit against the state that was settled for over \$200,000. The ruling rejected the argument brought by the Division of State Police, which had asserted that state law allowed it to reject a public records request that had sought the officer's personnel file.

Prosecutorial Discretion

Georgia

[In re: Prosecuting Attorneys Qualifications Commission Rules and Code of Conduct](#)

The Georgia Supreme Court declined to approve rules for a new commission to investigate and discipline prosecutors as part of a new law passed earlier this year by the state legislature, writing that the state's highest court held serious doubts about its constitutional authority to weigh in on the proposed rules. Legislators have signaled their intent to amend the law to remove language that requires the Supreme Court to approve the proposed rules. The new law is seen broadly as an effort to limit the power of reform-minded prosecutors, and more narrowly as a mechanism to remove Fulton County District Attorney Fani Willis from office after she brought charges against former President Donald Trump and 18 of his co-conspirators for their efforts to overturn the results of the 2020 election in that county.

Redistricting

New Hampshire

[Brown v. Secretary of State](#)

The New Hampshire Supreme Court ruled in a 3-2 decision that the state constitution gives legislators the authority to control the legislative redistricting process and that the question of whether legislative district maps have been gerrymandered in a partisan manner is not a question that courts in the state can consider or resolve. The ruling came in a case that alleged the state's districts were unconstitutionally drawn by Republican lawmakers to give themselves an electoral advantage by drawing district lines to dilute the power of Democratic voters.

New Mexico

[Republican Party v. Oliver](#)

In a unanimous decision, the New Mexico Supreme Court upheld the state's congressional district map, which was drawn by Democratic lawmakers, after Republican legislators had challenged the map in a lawsuit alleging it was unconstitutionally gerrymandered to favor Democrats. The Republican plaintiffs have indicated they may appeal the decision to the U.S. Supreme Court.

Ohio

[Ohio Supreme Court upholds new state legislative redistricting plan](#)

The Ohio Supreme Court ruled in a 4-3 decision to dismiss a series of lawsuits that had challenged the constitutionality of the state's new legislative redistricting plan, which alleged that the plan's maps are intentionally drawn to favor Republicans in violation of the state's constitution. With the ruling, which dismissed the challenges to the maps on procedural grounds without considering the merits of either side's arguments, the maps will remain in place until after the next U.S. Census in 2030.

Voting Rights

Montana

[Montanans for Elections Reform, et al. v. State of Montana, et al.](#)

In a unanimous ruling, the Montana Supreme Court blocked an effort by the state's attorney general to keep a proposed ballot initiative to amend the state's constitution off the 2024 ballot. The initiative aims to replace the state's partisan primary system with one in which all candidates run in one primary regardless of party affiliation, with the top four vote-getters advancing to an instant-runoff general election. The court's decision overruled assertions from the state's attorney general that the initiative

violates the state constitution, allowing organizers of the initiative to begin gathering signatures as part of the next step in their efforts to get the issue before voters on the 2024 general election ballot.



[Arizona Supreme Court judge recuses himself from upcoming abortion case](#)

Arizona Supreme Court Justice Bill Montgomery has agreed to recuse himself from hearing an upcoming case to determine whether abortion will remain legal in Arizona. Justice Montgomery had been asked to recuse himself by Planned Parenthood, one of the plaintiffs in the case, after it came to light that he had made inflammatory public comments about the nature of Planned Parenthood's health services and advocacy work, and once protested outside its headquarters.



[Colorado Supreme Court hears oral arguments in Trump 14th Amendment case](#)

The Colorado Supreme Court heard oral arguments in a case challenging a lower court decision blocking attempts to prevent Trump from appearing on the ballot. Appeals were filed by both voters and Trump campaign, for differing reasons. Voters appealed attempting to prevent him from appearing on the ballot. Trump appealed to challenge the decision's statement that he participated in an insurrection.



[Plaintiffs call for Florida Supreme Court to weigh in on fairness of state's congressional districts](#)

Voting rights advocates are appealing a lower court decision upholding the state's congressional maps to the Florida Supreme Court. Groups claim the maps, drawn by DeSantis' office, break a solidly democratic and majority-Black district into four smaller districts, violating the state constitution which protects against the dilution of minority votes during redistricting. The supreme court will decide if they want to take up the case or not. There is also an ongoing challenge to the maps in federal court.

[Maryland Supreme Court to hear arguments on qualified immunity in police shooting of Korryn Gaines' son](#)

The Maryland Supreme Court may potentially impact the scope of qualified immunity in the state. Kodi Gaines, a 5-year-old child at the time, was shot in a police raid of his mother's home while police were serving a warrant for his mother's arrest. Gaines' attorneys are looking to hold the officer accountable for shooting Gaines while in pursuit of the arrest.



[Plaintiffs in lawsuit to remove Trump from ballot look to Michigan Supreme Court](#)

In another lawsuit challenging Trump's ability to appear on the 2024 presidential ballot, progressive advocates have filed a case before the state supreme court seeking to overturn a lower court's dismissal of their case. Advocates claim the constitution's insurrection clause prevents Trump from appearing on the ballot.

[Ottawa Co. appeals health officer ruling to Michigan Supreme Court as \\$4M settlement judgment nears](#)

A Michigan county has asked the state supreme court to overturn an appeals court ruling that found the county's public health director was properly appointed and cannot be terminated without cause. The county's board of commissioners, which is **dominated** by a far-right fundamentalist group, has been engaged in a months-long campaign to terminate the health director so they can install a new director who is **aligned** with their views.



[Pa. Supreme Court justices question GOP effort to impeach Philly DA Larry Krasner](#)

The Pennsylvania Supreme Court will decide

[Texas abortion case heard before state's highest court, as more women join lawsuit/State Supreme Court Justices weigh next steps in Texas abortion law](#)

if the articles of impeachment against progressive Philadelphia District Attorney Larry Krasner will expire at the end of the legislative session instead of carrying over into the new legislative session. The court is also deciding whether the conduct alleged in the articles of impeachment actually constitute misconduct in office and if statewide officials can impeach locally elected officials.

The Texas Supreme Court is being asked to clarify vague language in the state's abortion ban that prevents medical professionals from providing life-saving care to pregnant patients during medical emergencies. **Twenty patients**, all of whom were or are being denied care due to their doctors' fears of persecution from the state, and two physicians are the plaintiffs in the suit.

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