



Dear {{FirstName or 'Friend'}},

In our last State of Justice issue of 2023, we are reflecting on the powerful effects state courts can have on the fundamental rights of Americans, embodied just this week by the Colorado Supreme Court's unprecedented [ruling](#) to remove Donald Trump from the presidential primary ballot in that state. Interpreting the 14th Amendment of the U.S. Constitution, the state's highest court disqualified Trump from eligibility to appear on the ballot due to his involvement in the January 6, 2021 attack on the U.S. Capitol building. And the power of state courts has been front and center as the nation is bearing witness to the new reality of the post-*Dobbs* landscape in states that have functionally banned abortion. These states that have insisted their new abortion bans do not affect the lives of pregnant people due to the existence of "exceptions" that allow access to abortion in certain circumstances, but we now see that these exceptions were never intended to be made available in practice.

Earlier this month, a pregnant Texas mother of two named Kate Cox [sued](#) the state seeking an exception to the state's law allowing people to be sued for obtaining an abortion. She sought an abortion because her fetus was suffering from a fatal defect called Trisomy 18, and carrying her pregnancy to term could endanger her life and her ability to bear future healthy pregnancies. Initially, a Travis County District Court judge [granted](#) Cox's request. However, shortly after her lawyers announced the restraining order had been granted, Texas Attorney General Ken Paxton [announced](#) his office would ask the Texas Supreme Court to overrule the district court judge's order. The Texas Supreme Court soon [released](#) an [opinion](#) granting the attorney general's request for an injunction, ruling that Cox's initial request for a temporary restraining order was improper because it should have been requested by her doctor, and that her doctor failed to testify that her condition was life threatening. Kate Cox was ultimately forced to [leave](#) the state of Texas to seek the abortion that would preserve her life and her ability to grow her family in the future.

The events of the past several weeks have shown that state courts have the power to profoundly affect the rights of the people who live in those states. As we previously covered, state supreme courts issued decisions affecting abortion access in [North Dakota](#), [Oklahoma](#), [Montana](#), [Ohio](#), [Indiana](#), [South Carolina](#), and [Georgia](#) in 2023. Indeed, the nine members of the Texas Supreme Court just set a disturbing precedent regarding the rights of every pregnant person in Texas. Three of those justices' seats are up for re-election in 2024. We go into more detail about the factors of these races in our Elections coverage later in this issue.



Ethics Update

Recent reporting from [ProPublica on Justice Thomas' corruption](#) and the [Center for Public Integrity's recent report](#) on state court ethics have underscored the need for increased scrutiny and accountability across all levels of our state and federal judiciaries. The Center for Public Integrity identified numerous ethical concerns for state judges across multiple states, including North Carolina. AFJ Action has been closely following the [recent attacks](#) on [Justice Anita Earls](#) from the North Carolina Judicial Standards Commission. The commission, however, has chosen to ignore multiple instances where conflict of interest concerns were raised for the current Chief Justice Paul Newby. There were six cases identified where Justice Newby or his wife had held more than \$10,000 worth of stock in Duke Energy, the state's utility provider, and Newby still heard the cases. The report also cited instances in California and Texas when justices held financial stake in a party before the court.

Not all conflicts of interest are related to financial conflicts. For example, North Carolina Justice Phil Berger Jr. was [asked to recuse](#) himself from the redistricting cases before the supreme court because his father is the Republican state Senate president pro tem and the conservative controlled legislature drew the maps. In a current case before the Arizona Supreme Court deciding the fate of the state's 15-week abortion ban, Justice Montgomery [has already recused](#) himself due to previous anti-abortion statements. Now, Justice Bolick [is being asked](#) to recuse himself because the 15-week ban was co-sponsored by his wife state Representative Shawna Bolick. Justice Bolick does not intend to recuse himself and released [this statement](#).



Vacancies



Massachusetts Governor names nominee to fill first supreme court vacancy

Governor Healey **nominated Elizabeth Dewar** to the state's highest court to fill retiring Justice **Elsbeth Cypher's** seat. In order to join the court, Dewar must be confirmed by the Governor's Council. A date for the vote has not been announced yet, but Justice Cypher will retire on January 12, 2024. Once confirmed, Dewar may serve on the court until she reaches the mandatory retirement age of 70 in 2050. Dewar is Governor Healey's first nominee to the court but will have an opportunity to fill another vacancy due to **Justice Lowy's expected retirement** in February 2024.

Dewar began her legal career as a law clerk across all three levels of the federal judiciary, serving as a clerk to Justice Breyer, Judge Fletcher, and Judge Pollak. Upon completion of her clerkships, Dewar was a civil rights advocate at the Public Interest Law Center in Philadelphia. She then went into private practice at Ropes and Gray as an appellate attorney. Dewar joined the Attorney General's office in 2016 following her nomination as second State Solicitor by Governor Healey.



6 potential nominees announced for the Tennessee Supreme Court vacancy

The Governor's Council for Judicial Appointments **will review six applicants** in their upcoming public hearing on January 4, 2024. Throughout the hearing, members of the public are invited to offer objections about any of the candidates either in person or in writing. The council is expected to vote immediately after the hearing concludes.

The six applicants are Chancellor of the Chancery Court of Tennessee [Tony Childress](#), Tennessee Court of Criminal Appeals Judge [J. Ross Dyer](#), McNairy County General Sessions Judge and Juvenile Court Judge [Van McMahan](#), Presiding Judge of the Tennessee Court of Criminal Appeals [Camille McMullen](#), private practice attorney [Jeffery Smith](#), and Circuit Court for the 13th District at Memphis Judge [Mary Wagner](#). Currently, there are no justices of color on the court, and McMullen is the only applicant of color.

Elections

With 32 states holding partisan, nonpartisan, or retention elections for seats on their supreme courts in 2024, filing deadlines are approaching and races are beginning to take shape. Primary, runoff, and general elections are scheduled throughout 2024, and the AFJ Action team will be tracking races across the country as filing deadlines pass.



Five seats up for election on Alabama Supreme Court, including Chief Justice

The terms of five Alabama Supreme Court justices will expire in early 2025. Alabama chooses its supreme court justices in partisan elections, with a primary held on March 5, 2024, and the general election held on November 5, 2024.

Among the five seats up for election is the Chief Justice seat, which is being vacated due to the mandatory retirement of current Chief Justice [Tom Parker](#). Two Republicans filed to run in the primary for the Chief Justice seat: former state senator [Bryan Taylor](#) and current Associate Supreme Court Justice [Sarah Stewart](#). The winner of the Republican primary will face Democrat [Greg Griffin](#), a judge of the Alabama 15th Judicial Circuit, in the general election.

Alabama Court of Criminal Appeals Judge [Chris McCool](#) is running unopposed in the Republican primary for the seat being vacated by Justice Stewart's decision to run for the Chief Justice seat, with no Democrat filed to run. In the remaining three seats, incumbent associate justices [Tommy Bryan](#), [William Sellars](#), and [Jay Mitchell](#) are running unopposed in the primary and general elections and will presumably win new terms.



Two justices appointed to the Illinois Supreme Court on the ballot in 2024

The seven justices of the Illinois Supreme Court represent districts that are separated by county lines. There are five judicial districts, with three justices representing the first district and one justice for each of the other four districts.

Justices are first elected in partisan elections to serve 10-year terms and stand in nonpartisan retention elections to remain on the court. In 2024, two justices who were appointed to the court in 2022 must stand for partisan election to remain on the court. In the First District, incumbent Justice [Joy Cunningham](#) will face a primary opponent,

Illinois First District Appellate Court Justice [Jesse G. Reyes](#), in the Democratic primary on March 19, 2024. No Republican filed to run in the First District, so the winner of the primary will run unopposed in the November 5 general election. In the Fourth District, incumbent Justice [Lisa Holder White](#), a Republican, did not receive a primary or general election opponent.



North Carolina Supreme Court Justice Allison Riggs receives primary, general election opponents

North Carolina Supreme Court Justice [Allison Riggs](#), a Democrat and former voting rights attorney who was [appointed](#) to the state's highest court by Governor Roy Cooper in September following the resignation of Justice Michael R. Morgan, will face a Democratic primary challenger in the race to fill the remainder of her term.

Justice Riggs will face [Lora Cubbage](#), a judge for the 4th Superior Court Division, in the March 5 primary election, with the winner facing off against Court of Appeals Judge [Jefferson Griffin](#) in the November 5 general election. North Carolina selects its supreme court justices in partisan elections.



Ohio Supreme Court Justice Joe Deters will seek a full term against fellow Justice Melody Stewart

Matchups are now set for next year's partisan elections for three seats on the Ohio Supreme Court, with the Ohio GOP announcing that Republican Justice [Joe Deters](#) will challenge fellow Justice [Melody Stewart](#), a Democrat, for a full six-year term.

Deters was [appointed](#) to the court earlier this year by Governor Mike DeWine to fill a vacant term that will expire in 2026, but chose to seek a full term rather than running to fill the remainder of the term to which he was appointed. Instead, Franklin County Common Pleas Judge [Dan Hawkins](#), a Republican, will run against 8th District Court of Appeals Judge [Lisa Forbes](#), a Democrat, to fill the remainder of the two-year term. Democratic Justice [Michael Donnelly](#) is the third incumbent justice up for re-election, with Hamilton County Common Pleas Judge [Megan Shanahan](#), a Republican, challenging him for his seat. Republicans have held a majority on the court for 40 years, and currently hold a 4-3 majority. The outcomes of next year's Supreme Court races could flip control of the state's highest court.



Judges on Texas' high courts receive primary, general election challengers

Texas and Oklahoma are the only states in the country with two courts of last resort. In Texas, the Supreme Court is the court of last resort for civil appeals, and the Court of Criminal Appeals is the court of last resort for criminal appeals. Texas chooses its high court judges in partisan elections. Between the two high courts, the terms of six justices will expire in 2024: three on the Supreme Court, and three on the Court of Criminal Appeals.

On the Supreme Court, Justices [John Devine](#), [Jimmy Blacklock](#), and [Jane Bland](#) must run for re-election to retain their seats, while Presiding Judge [Sharon Keller](#), Judge [Barbara Hervey](#), and Judge [Michelle Slaughter](#) are up for re-election to the Court of Criminal Appeals. All six judges received [challenges](#) in the general election, and several also received primary election challengers.

Two Democrats, [Randy Sarosdy](#) and Judge [DaSean Jones](#), filed to run against Justice Blacklock, who is running for a second term on the state's highest court for civil matters. Two other Democrats filed to run against Justice Bland, who is also running for a second term: [Joe Pool](#) and Judge [Bonnie Lee Goldstein](#). Jones, a judge of the Texas 180th District Court; and Sarosdy, a judicial educator and former litigator, will first face each other in the March 5 primary, as will Goldstein, a judge on the Texas Fifth District Court of Appeals; and Pool, an attorney and business owner. [Christine Vinh Weems](#), a judge of the Texas 281st District Court, is the only Democrat to file against Justice Devine, who is seeking a third term. Judge [Brian Walker](#), a judge on the Texas Second District Court of Appeals whose father is a judge on the Court of Criminal Appeals, also filed to challenge Justice Devine in the March 5 Republican primary.

One Democrat filed to run against each incumbent judge on the Texas Court of Criminal Appeals, and each incumbent judge also received a [challenger](#) in the Republican primary. Seeking a fifth term, Presiding Judge Sharon Keller will face former state appeals court judge [David Schenck](#) in the March 5 Republican primary, with the winner of that election facing [Holly Taylor](#), an assistant district attorney in Travis County, in the November 5 general election. Also running for a fifth term, Judge Barbara Hervey is facing primary opponent [Gina Parker](#), a criminal defense attorney, with the winner facing the presiding judge of the Dallas County Criminal District Court No. 6, Judge [Nancy Mulder](#), in the general election. Judge Michelle Slaughter, running for a second term, is challenged by private practitioner [Lee Finley](#) in the Republican primary, with the winner facing Judge [Chika Anyiam](#), presiding judge of the Dallas County Criminal District Court No. 7, in the general election.



CASES IN THE COURTS

Access to **Justice** 

Arkansas

[Robinson Nursing and Rehabilitation Center v. Phillips, et al.](#)

In a 4-2 opinion, the Arkansas Supreme Court remanded a class action lawsuit alleging a nursing home failed to provide agreed-upon care and services back to a lower court and assigned a new judge to hear the case more than eight years after it was initially filed. The majority found that the judge originally assigned to the case failed to follow earlier orders to issue specific findings, while the minority asserted the judge did comply with the earlier orders and the high court should have ruled on the merits of the case.

Election Law

Colorado

[Anderson v. Griswold](#)

In an unprecedented 4-3 ruling, the Colorado Supreme Court ruled that former President Donald Trump is ineligible to appear on primary ballots as a presidential candidate due to his involvement in the January 6, 2021 riot at the U.S. Capitol Building. The state's high court ruled that the riot was an insurrection that Trump helped to incite, rendering him unqualified under the 14th Amendment of the U.S. Constitution to swear an oath to defend the Constitution as required of officers of the United States, including the president. The ruling was placed on hold until January 4 pending an expected appeal by the Trump campaign to the U.S. Supreme Court. The Michigan Supreme Court has been asked to hear a similar case, and the Minnesota Supreme Court dismissed another case asking to remove Trump from the ballot in that state last month.

Legislative Redistricting

Kentucky

[Graham, et al. v. Adams, et al.](#)

In an opinion in which six of seven justices joined in full or in part, the Kentucky Supreme Court rejected a challenge to the state's legislative district maps that accused Republicans in the state house of drawing the maps to favor their party in violation of the state's constitution. The court's majority agreed that the maps were

gerrymandered but disagreed that the state's constitution forbids the consideration of partisan interests because the role of drawing the maps is assigned by the constitution to the state legislature, an inherently political body.

New York

[Hoffmann v. New York State Independent Redistricting Commission](#)

The New York Court of Appeals ordered the state's Independent Redistricting Commission to redraw its congressional district map after finding that the current map violates the rights of New York voters. A court-appointed special master drew the maps in 2021 after the deadlocked commission adjourned without completing new maps following the 2020 Census, but the state's highest court found that the constitution requires the map to be drawn by the commission, which the court ordered to submit a new map by February 28, 2024.

Tennessee

[Wygant, et al. v. Lee, et al.](#)

The Tennessee Supreme Court issued a ruling that blocked a lower court order directing state lawmakers to redraw the district map for the State Senate after a panel of judges ruled that the map violated a constitutional requirement affecting which years those seats are up for election. With the court granting a stay requested by the state to put the process of drawing a new map on hold, the map will most likely remain in effect while the case is heard in lower courts. A separate suit challenging the state's legislative district maps in federal court is also ongoing.

LGBTQ+ and First Amendment Rights

Iowa

[State of Iowa v. Geddes](#)

In a 6-1 opinion, the Iowa Supreme Court affirmed the conviction and sentence of an Iowa man who was convicted of trespassing as a hate crime after he left anti-LGBTQ+ notes on homes that displayed pride flags, and had appealed his conviction on the grounds that it violated his right to free speech.

Virginia

[Vlaming v. West Point School Board](#)

The Virginia Supreme Court vacated a lower court decision to dismiss a lawsuit filed by a former high school French teacher against the school district that terminated his employment after he refused to use the preferred pronouns of a transgender student in his class. The teacher alleged the district's actions violated his right to free speech and religious expression, while the district argued that the termination was warranted because the teacher violated the district's policy forbidding discrimination and harassment on the basis of gender identity. The high court's ruling means the lawsuit can be heard by a lower court.

Police Accountability

Florida

[City of Tallahassee v. Florida Police Benevolent Association, Inc., et al.](#)

The Florida Supreme Court ruled in a unanimous decision that an amendment to the state's constitution intended to protect the rights of crime victims does not shield the names of police officers from disclosure. The decision came in a case arising from an

effort by the city of Tallahassee to release the names of two of its officers involved in separate use-of-force incidents after their union argued their identities must be shielded because they were victims of the people they had shot.

Reproductive Rights

Ohio

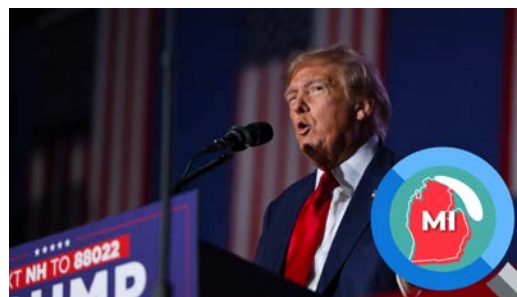
[Preterm-Cleveland v. Yost](#)

In a 5-2 opinion, the Ohio Supreme Court dismissed a challenge brought by the state's attorney general against a common pleas judge's order that placed the near-total statewide abortion ban on hold over a year ago. The decision remanded the case back to the common pleas judge, who has also been asked by a group of abortion clinics to permanently block the abortion ban following Ohio voters' decision to approve a ballot measure that enshrined abortion rights in the state constitution, with the majority writing simply that the appeal was "dismissed due to a change in the law."



[Arizona Supreme Court hears arguments in pivotal case on 1864 abortion ban](#)

The Arizona Supreme Court is set to decide which of the state's abortion bans to enforce, a 1864 total ban pre-dating statehood or a 15-week ban passed in 2022, because the 2022 law did not specify if it would overturn the 1864 ban. A decision is expected early next year. Abortion access is likely to be challenged again in Arizona because of a proposed constitutional amendment for 2024 seeking to enshrine



[Liberal group appeals ruling letting Trump stay on ballot to Michigan Supreme Court](#)

Liberal advocates are challenging a lower court decision allowing the state Republican Party to put any candidate on the ballot, even if disqualified, before the Michigan Supreme Court. Groups are citing the constitution's insurrection clause, similar to numerous other cases across the country.

the right to an abortion up to 24 weeks. If passed, it would undo both of the bans.



[Attorneys for Gianforte, agencies ask Supreme Court to put order in Montana climate case on hold](#)

Montana state attorneys are asking the state supreme court to hold the enforcement of a lower court decision until the high court has had a chance to review their case. The case, brought by Montana youth, centers around the state's failure to secure a "clean and healthful" environment for all Montanans. State attorneys argue the lower court's decision ordering them to evaluate and analyze greenhouse gas emissions would put too much of a burden on state agencies and are seeking clarification if this evaluation must be done during the course of the appeal or afterwards. Attorneys also claim the lower court judge overreached in her authority ordering a state agency to perform the analyses.



[Anti-abortion ordinances tested today at N.M. Supreme Court](#)

Attorney General Torrez is challenging local county ordinances restricting residents' ability to receive abortion pills or abortion related materials in the mail before the state supreme court. The challenge to the laws comes after House Bill 7's passage which prevents interference with individuals' bodily autonomy or gender-related healthcare from governments or other individuals. Torrez is also asking the court to find the right to abortion within the state constitution.



[New Mexico Supreme Court hears arguments on clearing homeless encampments](#)

Civil rights attorneys are challenging Albuquerque's clearing of homeless encampments. Attorneys are challenging how and when the city is allowed to clear these encampments.



[Attorney General: six-week abortion ban unconstitutional, but Ohio Supreme Court case should go on](#)

Despite the passage of Issue 1, a constitutional amendment protecting abortion access in Ohio, by a majority of Ohioans, Attorney General Yost is still challenging the state's new amendment in court. Yost is asking the court to find if providers had standing to challenge the state's previous six-week ban that was in

effect as well as if a preliminary injunction against a state law can be appealed.



[Pa. Supreme Court will consider whether officials' Facebook posts are public records](#)

Crawford County resident Thomas Cagle filed a Right-to-Know request to review a Crawford County School Board member's homophobic Facebook posts calling out LGBTQ+ friendly books on school shelves. Following the denial of the request, Cagle appealed the decision to the Right-to-Know board, which was held up in county court. The statewide Commonwealth Court overturned the lower court decisions. Now, Cagle has filed before the state supreme court. The question before the supreme court is whether a public official's private social media posts may be considered public records.



[Wyoming high court ponders whether anti-abortion lawmakers, group can assist in bans' defense](#)

Anti-abortion lawmakers and an advocacy group are asking to the Wyoming Supreme Court if they can join the state's attorneys in defending the state's abortion ban. The lawmakers and group argue the state isn't presenting adequate evidence to defend the ban and are seeking to supplement the state's case. Lower court judges have permitted amicus briefs from opponents of the ban such as doctors and pro-abortion groups in the case, however, the lawmakers and groups have chosen to attempt to join the case instead of filing briefs.

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