



Dear {{FirstName or 'Friend'}},

This year so many offices are on the ballot from the President to Senate to school boards to state legislatures. In many states, however, there is one office listed at the bottom of your ballot that determines how those elections are run. With 33 states holding elections for at least one seat on their respective supreme courts, state courts are already making headlines about how they're shaping [our rights](#) and [our democracy](#), but if this isn't your first State of Justice issue, you already know the immense impact these courts have on our daily lives. Considering state courts' role during the 2020 election in protecting [ballot drop-boxes](#), [mail-in ballots](#), and [presidential election certification](#), state courts will influence how our elections are run this year. Already, the Colorado Supreme Court gained national attention in December when it [prevented](#) former President Trump from appearing on the state's ballot due to the insurrection clause of the Fourteenth Amendment.

State courts weigh Trump's ballot eligibility

In late December, the Colorado Supreme Court [ruled](#) in an unprecedented 4-3 opinion that Trump is ineligible to appear on the presidential primary ballot in Colorado, citing language in Section 3 of the 14th Amendment to the U.S. Constitution that bans insurrectionists from holding public office to determine that Trump's actions leading up to and during the insurrection at the U.S. Capitol on January 6, 2021 disqualify him from holding public office again. Several days later, the Maine Secretary of State [determined](#) that Trump is similarly ineligible to appear on ballots in that state. The Trump campaign appealed the Colorado ruling to the U.S. Supreme Court, which [agreed](#) to hear the case and scheduled oral arguments for February 8. The campaign has also [appealed](#) the Maine ruling to the state's Superior Court, with that case expected to be heard by Maine's highest court. Similar litigation is currently pending in [Florida](#), [Illinois](#), [Louisiana](#), [Massachusetts](#), [North Carolina](#), and [Oregon](#); and the supreme courts of [Minnesota](#) and [Michigan](#) have already rejected efforts to

block Trump from the ballots in those states. You can track all state and federal efforts to bar Trump from appearing on presidential primary ballots [here](#).



Ethics Update

Integrity of Hawai'i Supreme Court justice designate's application questioned over disclosure failure

A Hawai'i Democratic Party official has [questioned](#) the screening and confirmation process of Vladimir Devens, a recently confirmed nominee to the Hawai'i Supreme Court, alleging that Devens's failure to disclose his involvement with a super PAC has compromised the integrity of his application and confirmation to the state's highest court. No part of the application questionnaire required disclosure of prior political activity, and restrictions on political activity are not applicable before someone is sworn in to the bench. While at least one member of the Senate Judiciary Committee said the information did not change his feelings about Devens's fitness for the bench, another legislator indicated that a formal complaint would be filed with the state's Office of Disciplinary Counsel regarding Devens's failure to disclose the activity. The Senate Judiciary Committee also [announced](#) that it will change the format of the questionnaire used to vet nominees. Devens was [confirmed](#) by a unanimous vote of the Senate Judiciary Committee and is [scheduled](#) to be sworn in on January 12.

North Carolina Supreme Court Chief Justice breaks tradition with Court of Appeals appointment tied to investigation of justice who criticized him

North Carolina Supreme Court Chief Justice Paul Newby has broken with a long history of judicial tradition in the state with his unprecedented [removal](#) of the chief judge of the North Carolina Court of Appeals, Donna Stroud, from her position as the leader of that court. Judge Stroud shared that she believes the move was part of political [payback](#) involving another supreme court justice, Phil Berger, Jr., who [supported](#) the judge that lost to Stroud in her 2022 reelection

campaign. Judge Stroud will remain on the Court of Appeals, but her apparent demotion will mark the first time that a sitting Chief Judge will have less seniority than another member of the court. Judge Stroud has six years more experience than Chris Dillon, the new Chief Judge appointed by Newby.

Notably, new Court of Appeals Chief Judge Chris Dillon also serves as [chair](#) of the Judicial Standards Commission, which is currently being [sued](#) by North Carolina Supreme Justice Earls for violating her First Amendment rights under the pretext of investigating her for breaking the state's judicial ethics code. The investigation came in response to an [interview](#) Earls gave that discussed the structural racism embedded in the North Carolina courts system and included comments that were critical of Newby.

Wisconsin Assembly Speaker backs away from threats to impeach Wisconsin Supreme Court justice

Wisconsin Assembly Speaker Robin Vos has [conceded](#) that the legislature is unlikely to follow through with its earlier [threats](#) to impeach Wisconsin Supreme Court Justice Janet Protasiewicz if she failed to recuse herself from a challenge to the state's legislative apportionment maps heard by the court earlier this year. Justice Protasiewicz recently voted with the court's new liberal majority to [order](#) the legislature to redraw the maps. Observers have [suggested](#) Vos's retreat is motivated by rules in the state constitution that would have required a replacement appointed before December 1, 2023 to run in a special election this spring. Because legislators did not remove Protasiewicz by that date, any replacement would not have to run to fill the seat until 2031.



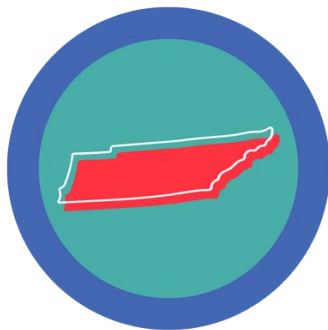
Vacancies



New Hampshire Supreme Court nominee confirmed

[Melissa Countway](#) was [confirmed](#) to the New Hampshire Supreme Court in a 4-1 vote by the Executive Council in late December. The no vote came from the Council's only Democrat citing concerns over how Countway's nomination could impact reproductive freedom in the state.

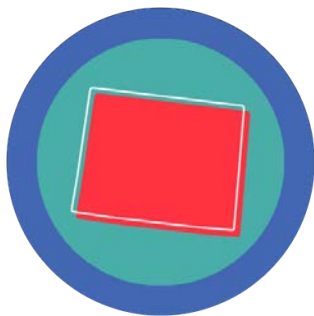
During her confirmation hearing, Countway [was asked about](#) her views on abortion after a pro-democracy coalition [raised concerns](#). Countway most recently served as judge on the New Hampshire Circuit Court. Prior to serving on the bench, she was the Belknap County Attorney successfully running for election three times as the Republican candidate. Countway is Governor Sununu's fourth justice confirmed to the five-member court.



Finalists named for Tennessee Supreme Court vacancy

The Governor's Council for Judicial Appointments [announced](#) the three finalists for the upcoming vacancy on the Tennessee Supreme Court following the public hearing held on January 5. The three finalists are Shelby County Circuit Court Judge [Mary L. Wagner](#) and Court of Criminal Appeals Judges [Camille R. McMullen](#) and [J. Ross Dyer](#).

Now, Governor Lee must make his nomination from the shortlist sent to him from the council, then that nominee must be confirmed the legislature. If confirmed, they will serve on the court for eight years. Upon conclusion of the term, they will face a yes/no retention election to remain on the bench for another eight-year term.



Three finalists named for Wyoming Supreme Court

Wyoming's Judicial Nominating Commission has released the three finalists' names it is sharing with Governor Gordon to fill the upcoming vacancy due to retiring Justice Keith Kautz. The finalists are Casper attorney [Tim Stubson](#), Cheyenne attorney [Robert Jarosh](#), and Sixth Judicial District Court Judge [Stuart Healy III](#).

Governor Gordon has until January 21 to nominate one of the three as the state's next supreme court justice. The nominee does not need to be confirmed and will assume office once Justice Kautz officially steps down in August. They will serve until 2026 and then face a yes/no retention election to remain on the bench for a full eight-year term.

Elections



Two candidates file for 5th District Kentucky Supreme Court seat

Two candidates filed to run for the 5th District seat on the Kentucky Supreme Court, which is being vacated by the retirement of Chief Justice Laurance VanMeter. Seven justices sit on the state's highest court and are elected from the state's seven appellate districts.

The two candidates running to fill the seat are [Erin Izzo](#), a private practitioner from Frankfort specializing in insurance and tort defense, and Judge [Pamela Goodwine](#), a judge on the 5th Appellate District Court of Appeals who served as commissioner and later chair of the Kentucky Commission on Human Rights prior to her election to the bench. Kentucky Supreme Court elections are nonpartisan, with the two candidates earning the most votes in the primary on May 21 advancing to the November 5 general election.



Capital Punishment

Alabama

[In re: Kenneth Eugene Smith v. State of Alabama](#)

In a 6-2 order, the Alabama Supreme Court gave the state permission to move forward with a novel method known as nitrogen hypoxia in the execution of a death row inmate who survived a previous effort by the state to execute him using lethal injection. The unproven nature of the new method has caused a panel of experts on the United Nations Human Rights Council to [appeal](#) to state and federal authorities to halt the execution, warning that it will likely violate UN conventions against torture and medical experimentation.

COVID Response

Montana

[Stand Up Montana v. Missoula County Public Schools](#)

The Montana Supreme Court ruled in a 5-2 opinion that a school district did not violate the constitutional rights of its students or their parents by implementing an indoor

mask mandate in response to the COVID-19 pandemic. The court's majority opinion upheld a lower court's decision to dismiss a lawsuit filed against the school district by a group of parents, finding the district had a legitimate interest in preventing the spread of the virus among its student body and staff.

Jury Selection

North Carolina

[North Carolina v. Tucker](#)

In a 5-1 opinion, the North Carolina Supreme Court denied a death row inmate's post-conviction motion to vacate his conviction and death sentence due to discrimination during his jury selection process. The court ruled the inmate's motion was barred because he had failed to raise a claim of purposeful discrimination during previous appeals, despite the fact that evidence to support his claim did not come to light until years after his previous appeals had taken place.

Legislative Redistricting

Wisconsin

[Clarke v. Wisconsin Election Commission](#)

The Wisconsin Supreme Court issued a decision ordering the state legislature to draw new apportionment maps for its state Assembly and Senate districts, finding the maps must be redrawn because some of the districts in the current maps are non-contiguous in violation of the state constitution. The 4-3 ruling will require candidates for all of the state's Assembly seats and half of its Senate seats to run in 2024.

Police Accountability

Iowa

[Penny v. City of Winterset](#)

The Iowa Supreme Court ruled in a unanimous decision that a municipality was not liable for damages arising from a lawsuit filed by a motorist who was seriously injured by a police officer responding to an emergency call, finding that the officer was not reckless when he proceeded through an intersection with his lights and sirens on before colliding with the motorist.

Statutory Interpretation

California

[People v. Rojas](#)

In a unanimous opinion, the California Supreme Court ruled that a law enacted in 2021 narrowing the statutory definition of a street gang did not unconstitutionally amend a ballot measure passed in 2000 that was intended to heighten penalties for gang activity.



[Arguments over abortion-rights initiative set for Feb. before Florida Supreme Court](#)

The Florida Supreme Court is reviewing the state's upcoming ballot initiative attempting to protect the right to abortion in the state. The court is not supposed to rule on the merits of the initiative but only evaluate if the language deals with a single subject. However, court watchers have noted that one of the sitting justice's spouses sponsored the state's six-week ban.



[Louisiana Supreme Court justices want their districts redrawn](#)

Five out of seven of the Louisiana Supreme Court justices asked the legislature to redraw their judicial districts and create a second majority minority district for supreme court races during the special session they're convening this month to redraw the state's congressional districts. However, Chief Justice Weimer and Justice Crichton [have sent](#) their [own letters](#) in opposition to their colleagues' plan. Lawmakers are not required to include the state's judicial district in this session's reapportionment.



[Lawsuit to save a historical, Black Maryland cemetery goes to the State's high courts today](#)



[Cadish Begins Term as Chief Justice of Nevada Supreme Court](#)

Maryland residents have argued before the state's highest court to preserve a historical Black cemetery on land that the county had sold to developers. The residents are attempting to protect the historical landmark and prevent further removal or harm to the historical site. This is the first case in the country where descendants of a Black community have argued before a state supreme court to save a burial ground.

Elissa Cadish succeeded former Chief Justice Lisa Stiglich to become the Nevada Supreme Court's newest Chief Justice on January 2. Cadish was first elected to the court in 2018 and was part of Nevada's first-ever female majority on the state supreme court.



[With Ohio Supreme Court dismissal, abortion 'heartbeat' ban now back in lower court](#)

Last month, the Ohio Supreme Court dismissed an appeal of the state's "heartbeat" ban, which bans abortions after a fetal heartbeat can be detected. The case has been returned to lower courts. Abortion providers have adjusted their claim and asked the court to dismiss the ban since Issue One, the amendment enshrining the right to abortion in Ohio, passed last year.



[Constitutionality of police using keyword warrants challenged in Pa. case](#)

"Keyword warrants" used by police are being challenged before the Pennsylvania Supreme Court. Keyword warrants require search engines to search for certain keywords or phrases used by specific user profiles or on specific devices and then turn over that user data to the police. A decision upholding the warrant in another case was delivered by the Colorado Supreme Court last September.



[SC high court to settle challenge on K-12 vouchers](#)

Oral arguments challenging the diversion of public school funds to private school education vouchers will be heard by the South Carolina Supreme Court on March 6. Opponents of the program say the use of these public funds is unconstitutional.



[Republican lawmakers ask Wisconsin Supreme Court to reconsider gerrymandering case](#)

Wisconsin Republican lawmakers are attempting to circumvent their constitutionally obligated duty of redrawing the state's congressional maps after being ordered by the state supreme court [last December](#) and have asked the court to reconsider their

decision because of the impact the deadlines to draw new maps could have on the 2024 elections, despite that lawmakers have passed other legislation in less time and the court had set deadlines well in advance of the elections. Lawmakers are also expected to appeal the case before the US Supreme Court due to Justice Protaseiwicz's ties to the state Democratic Party or the consideration of race during the redistricting process.

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