



Dear {{FirstName or 'Friend'}},

Multiple state supreme courts heard cases impacting reproductive freedom in the first days of Women's History Month, showcasing the monumental impact state courts continue to exert on the rights of women and pregnant people. Since the start of the month, multiple state supreme courts heard cases impacting abortion access in their respective states. The Nevada Supreme Court [will determine](#) the constitutionality of a ballot initiative attempting to protect reproductive rights in the state. This case is similar to the one the Florida Supreme Court [just heard](#). The Montana Supreme Court [will rule](#) on the state's parental consent law; currently, a minor under 16 years old is required to get parental consent when seeking an abortion. The court [is also likely to hear](#) an appeal of a lower court decision overturning a law with multiple restrictions, including a 20-week abortion ban, restrictions on prescribing medication abortions, a 24-hour waiting period for medication abortion, and an ultrasound requirement. The Nebraska Supreme Court [heard](#) arguments from the ACLU and Planned Parenthood challenging LB 574, a bill restricting both abortion and gender-affirming care. Meanwhile, residents in Utah are still waiting for their supreme court to determine the future of abortion in their state as the court [is grappling](#) with the future of the state's trigger ban. State supreme courts continue to deliver decisions impacting constitutional freedoms every day. As outlined in our last issue and covered below, 33 states will hold an election this year for their supreme courts. Learn more about your court and selection process [here](#).



Since Chief Judge Rowan Wilson was sworn in to lead the New York Court of Appeals (the state's highest court) in April 2023, court watchers have noticed a shift in the court's willingness to hear criminal appeals. The court employs a system for deciding which cases its judges will hear that is unique among state courts of last resort: each appeal is randomly assigned to one of the court's seven judges, and that judge has the sole discretion to decide whether the court will hear that case. A criminal defendant's chances of having their appeal heard by the state's top court greatly depend on which judge is assigned to their appeal. Some judges on the court have granted appeals in as many as one out of every 11 appeals assigned to them, while some have granted leave in fewer than one in 50 cases they are assigned.

The court's chief judge can influence how much their colleagues grant criminal appeals, and chief judges are often successful in shaping the court's position on the issue to closely match their own. Court watchers have seen an upward tick in the number of criminal cases the court has agreed to hear since former Chief Judge Janet DiFiore's resignation in 2022, giving reason to hope that Chief Judge Wilson can influence his colleagues to continue the trend now that he has assumed leadership of the court. If the court shifts away from its past practice in favor of granting more appeals, more defendants are likelier to apply for an appeal, and since decisions in criminal cases by the Court of Appeals are precedent setting for all lower courts, the shift could represent meaningful change for criminal law in New York.



Ethics Updates

Retired district judge raises questions about Colorado Supreme Court's integrity

In [an op-ed](#) submitted to *The Gazette*, retired district court judge Dennis Maes highlighted concerns with the Colorado Supreme Court, beginning with its handling of the 2019 pay-for-silence scandal and resulting in the most recent turnover and changes to the Colorado Commission on Judicial Discipline (CCJD), the disciplinary body charged with investigating allegations of misconduct into judges and justices. The 2019 scandal occurred when state court administrator chief of staff Mandy Masias threatened to go public with allegations of judicial misconduct if former chief justice Nathan Coats did not offer her a contract of \$2.5 million. Because of the scandal, Coats became the first supreme court justice disciplined by the CCJD.

The supreme court was heavily scrutinized throughout the CCJD's investigation into the scandal. Following the investigation, Maes argues, Governor Jared Polis and current Chief Justice Brian Boatwright replaced six of the ten commission members for more favorable and lenient committee members. As a result, Maes filed a request for evaluation (RFE) on supreme court justices that may have been involved in the 2019 scandal. However, no action was taken on the RFE for over a year. By the time action had been taken, Polis and Boatwright effectively remade the CCJD with a new majority and little movement has been made on the evaluation request.

Texas Supreme Court justice under fire for hyper partisan remarks

Following a campaign appearance where Justice John Devine attacked judges sitting on Texas' court of last resort for criminal appeals, Devine has come under [increased scrutiny](#) over his increasing partisanship and its resulting impacts on trust in the judiciary. Devine, a Republican, called other judges "brainwashed" and attacked Democratic legislators in Harris County for improving access to the ballot claiming they were going to "bastardize" the election code. These statements are not even among the most notable ethical concerns surrounding Devine. For example, Devine refused to recuse himself in a sex abuse case in which he used to be employed by the defendant in the case. He has also skipped over half of the oral arguments this term in order to campaign for re-election. Devine's blatantly partisan comments endanger public trust of the judiciary at all levels. So far, no disciplinary action has been taken against Devine by the State Commission on Judicial Conduct.



Vacancies



South Carolina Legislature Elects New Supreme Court Chief Justice

South Carolina Supreme Court [Justice John Kittredge](#) will become the next chief justice of the supreme court following the retirement of Chief Justice Donald Beatty in July of this year. Kittredge was [unanimously elected](#) by the legislature on March 6. Kittredge ran unopposed for the seat, as it is a state tradition for the most senior member of the court to be chief justice. Kittredge was first elected to the court by the legislature in 2008.

Meanwhile, state senators [have proposed](#) reforms to the state's judicial election process. Currently, the Judicial Merit Selection Commission (JMSC) reviews all applications and sends three candidates to the state legislature for a vote. The JMSC has come under scrutiny for lack of transparency and ethical concerns of the lawmakers, who are also practicing attorneys and sit on the committee, including after a Democratic member of the committee who worked as a criminal defense attorney [was attacked](#) for his past defense of certain clients. After calls for judicial reform and many negotiations, a bipartisan bill was introduced and [just unanimously passed](#) in the Senate. It makes a series of changes of the selection of the commission members in attempts to strengthen trust in the JMSC, increase transparency of the process, and allow the governor two appointees on the committee. Other changes include term limiting members and expanding the three-candidate cap to six candidates.



Tennessee Supreme Court Nominee Confirmed

On Monday, March 11, Mary L. Wagner [was confirmed](#) by the Tennessee General Assembly as the state's next supreme court justice. Wagner [was nominated](#) by Governor Bill Lee in February of this year and is Lee's third nomination to the court. Wagner is currently a judge on the Shelby County Circuit Court. She will replace Justice Roger Page after he retires on August 31 of this year.

Wagner gained bi-partisan support and only had three votes against her and is a self-described originalist and textualist. She is also a member of the Federalist Society. She spent her career in private practice before joining the bench. Once Wagner joins the bench later this year, the supreme court will be majority women.

Elections



Former U.S. Congressman Challenging Incumbent Georgia Supreme Court Justice

The terms of four incumbent justices of the Georgia Supreme Court are expiring in 2024: [Chief Justice Michael Boggs](#), [Presiding Justice Nels S.D. Peterson](#), [Justice Andrew Pinson](#), and [Justice John Ellington](#). Boggs and Peterson were appointed to the court by Governor Nathan Deal in 2017 and won election to full terms in 2018.

Pinson was appointed in 2022 by Governor Brian Kemp, who also appointed Boggs Chief Justice of the court that same year. Ellington joined the court in 2018 after winning an election to an open seat. All four incumbent justices have filed to run for another full term on the court. Only one of the incumbent justices received a primary challenger: Justice Pinson will face George Barrow, a former member of the U.S. House of Representatives. After serving in Congress as a Democrat from 2004 to 2014, Barrow ran unsuccessfully for the Georgia Supreme Court in 2020 and for Georgia Secretary of State in 2018. He will face Pinson in a nonpartisan primary election on Tuesday, May 21.



Two Incumbent Mississippi Supreme Court Justices Field Primary Opponents

Two incumbent justices of the Mississippi Supreme Court will face opponents in the state's nonpartisan supreme court election on Tuesday, November 5, 2024, and two others will run unopposed to retain their seats. Nine justices are elected to the court from three districts, with three justices representing each district.

Justices run in retention elections every eight years to remain on the court. For the Central District, Place 3 seat, [Justice Jim Kitchens](#) will face four challengers: civil litigators [Abby Robinson](#) and Byron Carter, former Mississippi Court of Appeals judge [Ceola James](#), and Republican [State Senator Jenifer Branning](#). [David Sullivan](#), a criminal defense attorney, filed to run against [Justice Dawn Beam](#) for her Southern District, Place 2 seat. In the Northern District, [Justice Robert Chamberlin](#) and [Justice James Maxwell](#) will run unopposed for Place 1 and Place 2 respectively. In the five-way race for the Central District, Place 3 seat, [a runoff election](#) will take place on Tuesday, November 26 if no candidate receives a majority of all votes cast in the November 5 election.



Three candidates file for each open seat on Montana Supreme Court

Two seats are being vacated on the Montana Supreme Court due to the retirements of [Chief Justice Mike McGrath](#) and [Associate Justice Dirk Sandefur](#). Former federal magistrate court judge [Jerry Lynch](#), Broadwater County Attorney [Cory Swanson](#), and private practitioner [Douglas Marshall](#) filed to run for McGrath's seat.

[Dan Wilson](#) and [Katherine Bidegaray](#), both district court judges, and former Republican state lawmaker [Jerry O'Neill](#) are running for Sandefur's seat. Montana holds

nonpartisan elections to elect its supreme court justices. The candidates will face off in a primary on June 4, with the top two vote-earners in each race advancing to the general election on November 5.



Congressional Redistricting



Wisconsin

Johnson v. Wisconsin Elections Commission

The Wisconsin Supreme Court denied a petition seeking to have the state's congressional district maps struck down and redrawn. The suit alleged that the court used an unapproved process to implement the current map in 2021, and that voters will be unconstitutionally disenfranchised until the next reapportionment process in 2031 if the map is not redrawn.

Criminal Justice



California

People v. Hardin

The California Supreme Court ruled in a 5-2 decision that people between the ages of 18 and 25 who are convicted of murder can be sentenced to life in prison without the possibility of parole, writing in its majority opinion that the ruling turned on the court's interpretation of California law requiring that any change to the policy must come through the legislature or a citizen initiative rather than a ruling by the court.

Alaska

State of Alaska v. McKelvey

The Alaska Supreme Court overturned the sentence of a man convicted on weapons and controlled substance charges, ruling that law enforcement officials who obtained probable cause for a search warrant of the man's home and outbuildings by using aircraft and cameras with high-powered zoom lenses to capture aerial photos of his property violated his right to privacy protected by the Alaska Constitution, and should have gotten a warrant to surveil and document the property aurally.

Education



Washington

M.G. v. Yakima Sch. Dist. No. 7

The Washington State Supreme Court ruled that a school district violated a student's due process rights when it expelled him due to his alleged gang association. The school later converted the expulsion to a long-term suspension despite the student's efforts to appeal the expulsion and documentation that his alternative online learning program was not meeting his needs. The court's ruling will require school districts to provide an education to students they expel.

Environmental Protections



Montana

[*Montana Trout Unlimited, et al. v. Tintina Montana, Inc., et al.*](#)

The Montana Supreme Court ruled that the state's Department of Environmental Quality complied with state law when it issued permits to a company seeking to build a copper mine. The plaintiffs were opponents of the proposed mine who had argued that its placement near a creek would negatively impact the water quality and quantity for the creek and a nearby river the creek feeds into and would threaten the river's trout population and associated fisheries. The court [will hear](#) oral arguments in a separate lawsuit by the plaintiffs challenging the mining company's water rights later this month.

Local Authority



Massachusetts

[*Six Brothers, Inc. v. Town of Brookline*](#)

The Massachusetts Supreme Judicial Court upheld the authority of communities and municipalities to enact their own regulations on the sale or distribution of products they deem harmful to their residents or visitors, ruling that the town of Brookline may enforce a first-of-its-kind ordinance prohibiting the sale of tobacco product within the town's limits to anyone born in the 21st century.

Workers' Rights



Arizona

[*Barriga v. Arizona Dept. of Economic Security, et al.*](#)

The Arizona Supreme Court ruled that employees are entitled to unemployment benefits if they leave their job due to intolerable working conditions and may present evidence of poor relationships with their coworkers to establish that their working conditions were intolerable. The ruling came in a dispute that arose when a man left his job because he fought with a coworker over the placement of a medically necessary cooling device in his workspace and was later denied unemployment benefits by his former employer and the state's unemployment agency.

Oklahoma

[*Board of County Commissioners of Muskogee County v. King*](#)

The Oklahoma Supreme Court has denied a legal challenge brought against a group seeking to collect signatures to place a ballot question before voters that would gradually raise the state's minimum wage to \$15 per hour by 2029 and then tie it to federal cost-of-living indices. Groups representing business interests had challenged the constitutionality of the proposed initiative, and the court's decision means organizers can prepare to begin gathering petition signatures.



Florida

[Voting rights groups urge Florida Supreme Court justices to reject a redistricting plan](#)

Voting rights groups submitted their brief in a case challenging Florida's 2022 redistricting plan, stating the plan violated a constitutional amendment prohibiting drawing districts that "diminish" racial minorities' abilities to "elect representatives of their choice." The district had previously been represented by Black Democrat Al Lawson, but after the 2022 plan went into effect only white Republican representatives were elected. The court has not set a date for oral arguments yet.



Hawaii

[Question of climate litigation's merits lands on SCOTUS' doorstep](#)

Fossil fuel emitters and oil companies Exxon, Chevron, and Sunoco have appealed to the Hawai'i Supreme Court's decision — which dismissed the companies' attempt to prevent a lawsuit from going to trial — to the U.S. Supreme Court. The lawsuit against the companies sought to hold them accountable for financial and environmental damages due to their promotion and use of fossil fuels.



Louisiana

[Gov. Jeff Landry's Quest for Louisiana](#)



Massachusetts

[High court considering whether not](#)

Supreme Court Reapportionment Faces Hurdles

As part of Governor Jeff Landry's special legislative session, the Louisiana legislature has been asked to redraw the state supreme court's districts map and create a new majority-minority district. The court's maps have not been updated in over 25 years. However, the conservative supermajority in the legislature has been resistant to make any changes to the maps despite support from five of the seven sitting justices.



Minnesota

Minnesota Supreme Court hears case on state dog 'ownership'

Cristina Berrier, a woman who was bitten by a Minnesota State Patrol narcotics dog, has appealed her case to the state supreme court. The court will determine if the state and state patrol may be sued and held liable for the dog bite under the state's dog-bite statute. Berrier is appealing the lower court decision finding the state is protected by sovereign immunity despite the language in the dog-bite law.



South Carolina

South Carolina Supreme Court to decide if new private school voucher program is legal

euthanizing terminally ill pet is a crime in Mass.

The Massachusetts Supreme Judicial Court will determine if an owner failing to euthanize their dog is a crime. Prosecutors brought charges against Mary Ann Russo, a dog owner who failed to euthanize her dog, Tipper, after receiving a terminal diagnosis for Tipper from her vet. Prosecutors believe Russo "willfully" subjected her dog to pain and suffering when she took her dog home instead of following the vet's advice. The court will determine if the criminal case against Russo may go to trial.



New Mexico

New Mexico Supreme Court to consider if inmates should be released from prison during conviction appeal process

The New Mexico Supreme Court will determine if Alexis Avila, a woman convicted of child abuse and sentenced to 16 years, may be released from prison while her conviction is being appealed. The intermediate appeals court found that Avila should be released, basing their decision on another case of child abuse where the defendants were allowed to be released during their appeals.

The South Carolina Supreme Court heard oral arguments in a case challenging the state's school voucher program, which diverts funds that would have gone to public schools and instead allows the state to subsidize and fund private school education. Challengers of the program say it is unconstitutional.

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