



North Carolina Voters for Clean Elections

North Carolina's War on Judicial Independence

After 10 years of success, with 65% of North Carolinians supporting it and 80% of judicial candidates participating, public financing for judicial races was repealed in 2013, allowing big money more influence over our fair and impartial courts.

Following this repeal, the General Assembly passed a law requiring that a panel of three Superior Court judges, instead of one judge, must rule on the validity of laws it passes. This stopped plaintiffs from judge-shopping, but some argued this new three-judge panel appointed by the Chief Justice, made up of judges from across the state, was created because the legislature hoped for different outcomes when its laws were challenged.

The 2014 Supreme Court elections did not go as conservatives had hoped, even though it was the first election without judicial public financing. Three of the four Supreme Court justices who were elected did not align with conservatives. Because the balance of power for the state Supreme Court would be up in the air with the 2016 elections, the legislature sought to change the rules once again.

In 2015, the North Carolina General Assembly passed a law providing retention elections for state Supreme Court. This meant incumbent judges no longer had to face challengers. Instead, voters would have a choice between re-electing incumbents or asking them to resign. In the event of resignations, the governor would choose interim judges who would serve two years before running for election. The law was challenged, and the newly created three-member Superior Court panel ruled against retention elections, noting that the state constitution mandates election of judges and that retention elections do not fit the constitution's parameters. The panel threw out the entire law, including party labels for state Supreme Court elections.

The fall of 2016 brought a wave election for Republicans but one Supreme Court candidate, Democrat Mike Morgan, won by a whopping nine-point margin and Republican Governor Pat McCrory lost his re-election bid.

Post-election rumors spread of a "court-packing" scheme. In December 2016, a special session was called under the guise of helping fire and flood victims. It was quietly understood that this would be an opportunity to gut the power of the incoming Democratic governor and "pack" the state Supreme Court by adding two more justices, who would be appointed by the outgoing Republican governor.

After a massive outcry, the plan disappeared. One week later, the public learned from a press release that Governor Pat McCrory had "also successfully worked to deter any efforts to expand the composition of our Supreme Court."

After the 2016 election, with a flip to Democratic majority of the state Supreme Court and the governorship, the Republican-controlled General Assembly began attempting to institute a number of laws bringing politics-infused changes to the judicial branch.

Changes were made in 2015 and 2016 to make all levels of judicial elections partisan, and in 2017 House Bill 100 even turned the election of trial judges into partisan races. North Carolina is the first state in 100 years to return to the widely-considered bad policy of partisan judicial elections.

Despite widespread opposition and a gubernatorial veto, House Bill 239 reduced the Court of Appeals from 15 judges to 12, because Republicans feared the incoming Democratic governor would be able to fill three vacancies that would come open during his term. Judge Douglas McCullough, a Republican, resigned early in protest of the bill, allowing Democratic Governor Roy Cooper to appoint his replacement, former Court of Appeals Judge John Arrowood.

Many see House Bill 239 as the beginning of an attempt to pack the state Supreme Court, by overturning its progressive majority. The bill shifts termination parental rights cases from the Court of Appeals to the Supreme Court, which adds an immense workload that Republican legislator Rep. Sarah Stevens argued on the House floor may mean the state needs to return to the issue of expanding the state Supreme Court next year.

Several bills that limit the governor's powers of judicial appointment made crossover and will continue moving through the legislative process threatening to inject partisan politics into judicial selection. House Bill 240 takes the power away from the governor to appoint district court judges and gives it to the General Assembly. House Bill 241 takes the power away from the governor to appoint Special Superior Court judges and gives it to the General Assembly. House Bill 335 takes the power away from the Governor to appoint when there is a vacancy on the NC Supreme Court or Court of Appeals and instead, political operatives of the party of the vacant judge would provide three names and the governor must select from that list. This is, in the view of many experts, unconstitutional. House Bill 677 would add district court judges to those who can serve on special three-judge panels appointed to decide redistricting cases and the validity of acts by the North Carolina General Assembly.

House Bill 717 redraws district court, superior court and prosecutorial districts. These were drawn in secret, behind closed doors and without public input. Many argue these districts were gerrymandered to create favorable elections for Republican judges. It has been roughly 50 years since the last full redraw, with minor adjustments done over time. These districts need to be redrawn and many propose supporting a better process, as laid out in House Bill 124, a study committee to develop better districts. House Bill 717 was halted but will come back this October.

Now there are discussions from Senate leaders who wish to push for legislative merit selection. This would put judicial selection primarily in the hands of the legislature and can only be accomplished by a constitutional amendment approved by voters.