

Gavel to Gavel

A review of state legislation affecting the courts

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Focus: Court Stripping

Numerous Federal efforts to remove jurisdiction from the courts pertaining to matters such as the Pledge of Allegiance or the phrase “under God” have been introduced in recent years. Similar attempts to remove or alter the jurisdiction of the state courts have also been considered, some echoing or outright copying their Congressional counterparts. What follows are just some of the bills introduced in the last two years.

Arizona’s [SCR 1026 of 2007](#) would have removed jurisdiction over cases where a government employee issued an “acknowledgement of God as the sovereign source of law, liberty or government.” The author [told local media](#) that “[W]e’re supposed to have religion in everything — the opportunity to have religion in everything. I want religion in government, I want my government to have a faith-based perspective.” The bill has subsequently been withdrawn.

Similar language was part of Kentucky’s [SB 236 of 2006](#), a constitutional amendment that would have prohibited courts from construing any provision of the state

Constitution to prohibit the historic display of the Ten Commandments on public property, require an increase in taxation, order the expenditure of funds by government, and a litany of other restrictions on the courts. It was approved by the Senate State and Local Government committee before being rejected by the full Senate in a 16-22 vote. This year, [HB 19 of 2007](#) would limit the courts power in Establishment Clause cases to injunctive relief and award of costs. Courts would be expressly prohibited from awarding “actual damages or attorney's fees.” The bill is currently in the House Judiciary committee.

As the Kentucky bill suggests, much of this jurisdiction removing legislation is focused on cases in which courts have ordered governments to provide additional funding to schools or for other purposes. Oklahoma’s [HJR 1061 of 2006](#) would have prohibited courts from ordering any action that would resulting an increase in taxes, fees or other sources of revenue. It was amended by and approved by the House Revenue and Taxation committee and passed the full House 78-12. It died without any action in the Senate Appropriations committee.



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Research Division

NATIONAL CENTER FOR STATE COURTS
300 Newport Avenue, Williamsburg, VA 23185
Phone (800) 616-6109 Fax (757) 564-2022

Editor's Email: wraftery@ncsc.dni.us

Subscribe: gaveltogavel@ncsc.dni.us

Online: http://www.ncsconline.org/D_Research/gaveltogavel/



Kansas's [SCR1603A of the 2005 Special Session](#) and [HCR 5032 of 2006](#) would have prohibited the courts from ordering funding or appropriations in general. The 2005 version was approved by the Senate Judiciary committee and the full Senate, but died without action in the House. The 2006 version was approved by the Select Committee on School Funding, sent to the House floor where it was amended and ultimately rejected by the full House.

Indiana's [SJR 12 of 2007](#) prohibits courts from issuing any order "requiring the State or a political subdivision of the State to expend money for the operation of any court of the State." It is currently pending in the Senate Judiciary committee.

Missouri's [HJR 31 of 2006](#) prohibits the courts from ordering the state or local government to levy or increase a tax. The legislation would also prohibit the courts from ordering how to spend, allocate, or budget fiscal resources in all cases except to compel reasonable funding of judicial operations. It was amended and approved by the House Judiciary and Rules committees before dying on the House floor at the end of the 2006 session. This year's version, [HJR 1 of 2007](#), passed the House Special Committee on General Laws and House Rules committees and passed by the full House (see Floor and Committee Activity below).

Newly Introduced

Selection

[KANSAS HB 2502 \(2007\)](#) Requires nonpartisan election of District court judges

or district magistrate judges who are not already so chosen. In Elections and Governmental Organization committee

[SOUTH CAROLINA SB 40 \(2007\)](#)

Requires Judicial Merit Selection Commission send a list of all candidates it deems are qualified to the General Assembly for their consideration. Restricts the General Assembly from considering anyone other than those submitted by the Commission. Prohibits nominees from receiving pledges from General Assembly members until after the Commission sends its report. Commission must notify newspapers and state bar of judicial vacancies for which applications are being accepted. Provides no member of the General Assembly may seek judicial office while serving or for one year after leaving the legislature. Requires candidates receive copies of recommendation of the Commission as to their nomination. Amended and passed by Senate Judiciary committee and full Senate. In House Judiciary committee

[TENNESSEE HB 2166 \(2007\)](#) Requires Judicial Evaluation Program release its report on appellate judges and publish the reports in specified newspapers. No committee assigned yet

[TENNESSEE SB 1952 \(2007\)](#) (See [TENNESSEE HB 2166](#)) In Senate Judiciary committee

[TENNESSEE HB 2311 \(2007\)](#) Removes provision for the judicial selection commission naming two instead of three nominees when the judicial district at issue is one of the five smallest judicial districts. No committee assigned yet

[TENNESSEE SB 2228 \(2007\)](#) (See [TENNESSEE HB 2311](#)) No committee assigned yet

[TENNESSEE HB 2141 \(2007\)](#) Extends sunset termination dates for the judicial selection commission and the judicial evaluation commission. No committee assigned yet

[TENNESSEE SB 2013 \(2007\)](#)(See [TENNESSEE HB 2141](#)) No committee assigned yet

[TEXAS SB 806 \(2007\)](#) Creates a merit selection process for most judges and justices. Bill is contingent on passage of a merit selection constitutional amendment. No committee yet assigned

[TEXAS SJR 32 \(2007\)](#) Creates a merit selection requirement in the state constitution for most judges and justices. No committee yet assigned

[WASHINGTON HB 2150 \(2007\)](#) Creates a merit selection process Supreme Court and Court of Appeals vacancies. Bill is contingent on passage of a merit selection constitutional amendment. In Senate Judiciary committee

[WASHINGTON SB 5325 \(2007\)](#) Creates a merit selection process Supreme Court vacancies. Bill is contingent on passage of a merit selection constitutional amendment. In Senate Judiciary committee

[WASHINGTON SB 5326 \(2007\)](#) Creates a merit selection process for Supreme Court vacancies. Bill is contingent on passage of a merit selection constitutional amendment. (Similar, but not identical to

[WASHINGTON SB 5325](#)) In Senate Judiciary committee

Qualifications and Terms

[WASHINGTON HB 1522 \(2007\)](#) Removes mandatory retirement age for judges (currently age 75). Legislation is contingent on passage of a separate amendment removing the mandatory retirement provisions from the state constitution. Amended and approved unanimously by House Judiciary. In House Rules committee

Rule Making Authority

[MONTANA SJ 8 \(2007\)](#) Urges Supreme Court to allow a person that graduates from a non-ABA accredited law school to take the bar exam. Tabled in Senate Judiciary committee

[MONTANA SJ 14 \(2007\)](#) Authorizes committee to examine whether Supreme Court should restrict permission to take the bar exam to those who have graduated from an ABA accredited law school. The Senate Judiciary committee held a hearing February 21 and tabled the resolution.

[OREGON HB 2357 \(2007\)](#) Authorizes Chief Justice to make use of electronic documents, electronic filings and electronic signatures in court proceedings. Permits State Court Administrator, to the extent permitted by the Chief Justice, to provide rules for the destruction of paper records after electronic records have been created. Amended and approved by House Judiciary committee.

[SOUTH CAROLINA SB 143 \(2007\)](#) Creates Statewide Criminal Case Management System and requires county

solicitor to create the criminal case management plan subject to the approval of the Chief Justice. Amended and passed by Senate Judiciary committee. Amended on floor and recommitted to Senate Judiciary committee.

Structure Changes

[MONTANA HB 722 \(2007\)](#) Changes the Justice Courts into courts of record. In House Judiciary committee

[MONTANA SB 523 \(2007\)](#) Changes the Workers' Compensation court into a court of record. In Senate Judiciary committee

[WASHINGTON HB 1130 \(2007\)](#) Creates an office of public guardianship as an independent agency of the judiciary. Amended and passed House Judiciary 9-2. In House Appropriations

Jurisdiction

(see this week's Focus article)

[WASHINGTON HB 1590 \(2007\)](#) Permits cities to contract with other cities for the delivery of municipal court services. Requires municipal courts to exercise jurisdiction over traffic infractions. Amended and passed House Judiciary unanimously. In House Rules committee

[WASHINGTON SB 5353 \(2007\)](#) (See [WASHINGTON HB 1590 \(2007\)](#)) In Senate Judiciary committee

Salary and Budget

[SOUTH CAROLINA HB 3116 \(2007\)](#) Creates Court Appointment Deferral Fund to be maintained by the Supreme Court. Fund

allows an attorney who might otherwise be required to represent indigent persons to be exempted for a year upon payment of a set fee. Approved by House Judiciary and full House. In Senate Judiciary committee.

[TENNESSEE HB 319 \(2007\)](#) Requires state AOC pay for expenses for a guardian ad litem in juvenile court cases involving dependency, termination of parental rights, or delinquent or unruly children. In House Children & Family Affairs committee

[TENNESSEE SB 623 \(2007\)](#) (see [TENNESSEE HB 319](#)) In Senate Judiciary committee

Other

[ARIZONA SB 1167 \(2007\)](#) Requires by December 31, 2007 Superior Court clerks in counties with over 2 million people to publish electronically all criminal case minutes unless prohibited by law. Clerks in counties under 2 million people are to take steps to electronically publish such minutes. Amended and passed unanimously by Senate Judiciary committee and unanimously by full Senate. In House Judiciary committee

[INDIANA SB 41 \(2007\)](#) Extends until July 2011 the Commission on Courts, which is tasked with reviewing and reporting on all requests for new courts or changes in jurisdiction of existing courts. Passed Senate Judiciary and full Senate unanimously. In House with no committee yet assigned.

[MONTANA HB 60 \(2007\)](#) Creates a self-help law program under the administration of the Supreme Court. Program must develop legal forms for the public and training for judges and others on self-

represented litigants. Approved as amended by the House Judiciary committee, failed on House floor on a 50-50 vote.

[MONTANA HJ 43 \(2007\)](#) Authorizes committee to determine if there is adequate legislative oversight of the Judicial Branch of government and a variety of other matters pertaining to the judiciary. In House Judiciary committee

[NORTH DAKOTA SCR 4004 \(2007\)](#) Directs the Legislative Council to study the respective responsibilities of county and state judicial system personnel under the Uniform Juvenile Court Act in light of statutory ambiguities in defining those responsibilities. Passed Senate Judiciary and full Senate. In House Judiciary committee

Floor and Committee Activity

[MISSOURI HJR 1 \(2007\)](#) Prohibits courts from instructing or ordering the levying or increase of taxes, or ordering how to spend, allocate, or budget fiscal resource. Passed the full House as this issue is going to press.

[OREGON HB 2417 \(2007\)](#) Directs State Court Administrator to prepare report every two years on compensation of state judges. Requires that report include computation of average compensation paid in other states to judges with closely equivalent responsibilities. Requires that State Court Administrator include statement of amounts needed during immediately following biennium to increase compensation of Oregon judges to equal average compensation received by judges with equivalent responsibilities in other

states. Approved by Government Accountability and Information Technology committee.

[SOUTH DAKOTA HB 1093 \(2007\)](#) Provides that the Supreme Court may declare judicial emergencies, permit suspension of court operations, designate another facility for cases to be heard, and toll deadlines and other time limits. Passed unanimously by Senate Judiciary and unanimously by full Senate. To Governor for approval.

[SOUTH DAKOTA HB 1098 \(2007\)](#) Expands magistrate court's jurisdiction to allow for acceptance of pleas in cases involving fines of up to \$2,000 (current limit is \$1,000). Passed unanimously by Senate Judiciary and unanimously by full Senate. To Governor for approval.

[UTAH HJR 4 \(2007\)](#) Executive Succession. Supreme Court to hear petitions regarding incapacity of Executive Officers. Approved by full House on a 59-12 vote.

[UTAH SB 224 \(2007\)](#) Amends various provisions in law. Increases from \$1,000 to \$2,000 the additional compensation a presiding judge receives. Includes court commissioners in the definition of judge for the purpose of imposing penalties for persons who threaten, intimidate, or interfere with a commissioner, or who retaliate against a commissioner for the performance of the commissioner's official duties. Approved by full Senate and in House Judiciary committee.

[VIRGINIA SB 987 \(2007\)](#) **ORIGINALLY:** Adds the Chief Justice of the Supreme Court to the Secure Commonwealth Panel. **AMENDED:** Adds the Executive Secretary

of the Supreme Court of Virginia to the Secure Commonwealth Panel. Unanimously approved by House Rules committee and full House. To Governor for approval.

[VIRGINIA SJ 418 \(2007\)](#) Establishes a joint committee of the Senate Committee for Courts of Justice and the House Committee for Courts of Justice to study redistricting the judicial circuits. Unanimously approved

by House Rules committee and full House. To Governor for approval.

[WEST VIRGINIA HB 2789 \(2007\)](#)

Authorizing the Supreme Court of Appeals to create a panel of senior status magistrate assistants. Approved by full House and in Senate Finance committee

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