

# 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 The bill was withdrawn shortly after being introduced.

Indiana’s [SJR 12 of 2007](#) would have prohibited 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.” New Jersey had a series of similar bills in 2007. [ACR 174](#) would have prohibited state courts from ordering the government spend money. [ACR 177](#) would have prohibited courts from ordering municipalities to provide for any particular land use within municipal borders.

Educational funding proved to be a key source of state court stripping efforts. New Jersey’s [ACR 189](#) would have forbidden judicial involvement in educational spending. Similarly, Kansas’ [SCR 1601 of 2007](#) would have specified school funding levels were the exclusive domain of the legislature, thereby prohibiting courts from entertaining lawsuits regarding adequate education. New Hampshire’s [HCR 1 of 2007](#) would have allowed such lawsuits, but rendered any judicial decision advisory only and not binding on the executive or legislative branches.

Missouri’s [HJR 1 of 2007](#), in its original form, would have prohibited courts from “instructing or ordering” taxes or “how to spend, allocate, or budget fiscal resources.” This version passed the House but a Senate committee substitute [with more limited language](#) would have required that “under no circumstances shall a court of this state order the general assembly or executive to



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increase taxes or create new taxes.” This version failed to reach full Senate approval before the end of the 2007 session. However, [SJR 42 of 2008](#) and [HJR 41 of 2008](#) have been introduced with much of their language derived from HJR 1 of 2007.

## *Newly Introduced*

### **Selection**

[IDAHO SB 1292 \(2008\)](#) Creates Idaho Fair Elections Act to provide an alternative, publicly financed campaign option to all statewide offices, state senate, or state house of representatives. (Note: Supreme Court Justice are “[elected by the electors of the state at large](#).”) Funding to come in part from assessment for civil traffic and similar violations. In Senate State Affairs committee

[ILLINOIS HCA 31 \(2008\)](#) Permits recall elections for all supreme, appellate, and circuit judges, all State executive branch officers, and members of the General Assembly. “Sufficiency of reason (for recall) is not reviewable.” In House Rules committee

[MICHIGAN HJR KK/ HJR 37 \(2008\)](#) Eliminates the designation of incumbency on judicial ballots. In House Judiciary committee

[MISSOURI HJR 52 \(2008\)](#) Abolishes the nonpartisan Judicial Commission. Establishes bi-partisan judicial merit selection commission, made up of 2 Bar members not of the same party appointed by the Governor, 2 non-Bar members not of the same party appointed by the Governor, 2 Bar members not of the same party appointed by the Attorney General, and one

person each appointed by the Speaker of the House, House Minority Leader, Senate President Pro Tempore, and Senate Minority Leader. Commission to submit 5 names to Governor. Governor’s selection to be confirmed by Senate. Mandates adherence by Merit Commission to Open Meetings and Records/ Sunshine Law. Specifies recommendations Bar may make (i.e. exceptionally qualified, qualified, no opinion, or not qualified). Requires each judicial applicant be subject to a background or criminal check; however, any information regarding the check will not be public record. Specifies any person who commits, aids, or abets perjury during the judicial appointment process will be punished with not more than one year in prison, a fine of not more than \$100,000, or both. In House Special Committee on General Laws

#### [WEST VIRGINIA HB 2950 \(2008\)](#)

Requires the election of all justices to the West Virginia Supreme Court of Appeals and all circuit court judges on a nonpartisan basis. In House Judiciary committee

#### [WEST VIRGINIA HB 3159 \(2008\)](#)

Provides that Justices of the Supreme Court of Appeals are to be elected from numbered divisions. Candidates from each numbered division are to be voted on at large from the entire state. In House Judiciary committee

### **Qualifications and Terms**

[COLORADO SB 54 \(2008\)](#) Establishes the office of judicial performance evaluation within the judicial department with a director appointed by the state commission on judicial performance. Repeals and reenacts, with amendments, sections establishing the duties of the state and district commissions. Specifies criteria by

which the state and district commissions are to evaluate justices and judges. Requires written evaluations of justices and judges to contain certain information. Provides that interim evaluations are to be conducted for each justice and judge at least once during the justice's or judge's full term of office. Directs the state court administrator to provide case management data on each justice or judge being evaluated. In Senate Judiciary committee

[INDIANA SJR 22 \(2008\)](#) Removes various county and state officers, including the office of circuit court clerk from the Constitution. In Senate Local Government and Elections committee

## Rule Making Authority

[ALASKA SB 226 \(2008\)](#) Amends Rules of Civil Procedure to authorize courts to manage vexatious litigants. In Senate Judiciary committee

[ILLINOIS HB 4230 \(2008\)](#) Requires clerks enter into the record all dispositions, judgments, and orders (rather than just judgments and orders) of their respective courts. In House Rules committee

[IOWA HSB 505 \(2008\)](#) Authorizes the Supreme Court to appoint the administrator for the board of examiners of shorthand (currently appointed by state court administrator). No committee yet assigned

[IOWA SSB 2017 \(2008\)](#) See IOWA HSB 505. No committee yet assigned

[VERMONT SB 246 \(2008\)](#) Prohibits the courts from allowing the general public to have unlimited electronic access to criminal

and family court records. In Senate Judiciary committee

### [WEST VIRGINIA HB 2384 \(2008\)](#)

Requires that members and staff of the Legislature automatically receive one fourth of the mandated continuing legal education for each regular session he or she works. Clarifies that mandatory continuing education "should never have applied to those persons who were already admitted to practice law when the requirement was promulgated." In House Judiciary committee

[WEST VIRGINIA SB 50 \(2008\)](#) Authorizes the Administrator of the Supreme Court to oversee bail bondsmen; and to promulgate rules if necessary. In Senate Judiciary committee

## Structure Changes

[VERMONT H 598 \(2008\)](#) Requires the court administrator and others study the feasibility and advisability of statewide expansion of the drug court program and to report to the House and Senate judiciary committees no later than December 15, 2008. In House Judiciary committee

[MARYLAND HB 87 \(2008\)](#) Authorizes a District Court commissioner to exercise the powers of that office in any county to which the commissioner is assigned by the Chief Judge of the District Court. Authorizes the Chief Judge of the District Court to assign a commissioner to serve temporarily in any county. Repeals limitations to the contrary. In House Judiciary committee

## Jurisdiction

[MISSOURI SJR 41 \(2008\)](#) Removes court's jurisdiction to order the levy or imposition of new or increased taxes, licenses, or fees. Removes court's jurisdiction to order a government agency or the general assembly to appropriate or expend public funds. Allows courts to enjoin the levy or collection of illegal taxes, etc. or the expenditure of public funds not authorized by law or contrary to law. Allows courts to order reductions in tax rates. (Identical to HJR 41) In Senate Judiciary and Civil & Criminal Jurisprudence committee

[WEST VIRGINIA SB 3 \(2008\)](#) Requires review of life without parole sentences by the State Supreme Court of Appeals. In Senate Judiciary committee

## Salary and Budget

[ALASKA SB 194 \(2008\)](#) Requires performance measures for all state agencies, specifically mentioning the judicial branch. Specifies 9 separate requirements or performance targets to be reached by the courts. In Senate State Affairs committee

[FLORIDA HB 581 \(2008\)](#) Authorizes counties to fund drug court programs through additional mandatory court cost against persons who plead guilty or no contest to, or are convicted of, certain drug-abuse prevention & control provisions or other local ordinances. In Safety & Security Council and Policy & Budget Council

[INDIANA SB 54 \(2008\)](#) Requires the attorney general to represent a court that has issued an order for mandate of funds for the operation of the court or court-related functions. Prohibits the state from reimbursing a judge for expenses incurred in employing a private attorney to represent the

court in an action for mandate of funds. In Senate Judiciary committee

[INDIANA SB 203 \(2008\)](#) Requires the auditor of state, working with the office of technology, to develop and maintain an Internet web site detailing all state expenditures by state agencies. Specifically exempts "the judicial branch of state government." In Senate Commerce and Public Policy & Interstate Cooperation committee

[MISSOURI HB 1541 \(2008\)](#) Allows the required annual report of the Judicial Finance Commission to be combined with any other annual report prepared by the Missouri Supreme Court or the Office of State Courts Administrator if it is distributed to the required parties. In House Judiciary committee

[WEST VIRGINIA HB 2344 \(2008\)](#) Sets same salary (\$50,000) for all magistrates in the state (currently, salary based on size of population served). In House Judiciary committee

[WEST VIRGINIA HB 2396 \(2008\)](#) Provides that a judge becoming eligible for retirement is not required to contribute to the retirement system; and clarifying that, for judicial retirement purposes, credited service includes certain time served as an elected or appointed municipal judge. In House Pensions and Retirement committee

[WEST VIRGINIA HB 2839 \(2008\)](#) Provides that a judge becoming eligible for retirement is not required to contribute to the retirement system; and clarifying that, for judicial retirement purposes, credited service includes certain time served as an elected or appointed municipal judge. (Similar, but not

identical to HB 2396) In House Pensions and Retirement committee

## Other

[COLORADO HB 1115 \(2008\)](#) Creates a new felony “Retaliation against a judge” if a person threatens, harasses, or harms certain individuals in retaliation or retribution against a judge. In House Judiciary committee

[MISSOURI HB 1567 \(2008\)](#) Creates the crime of murder of a criminal justice official in the first degree, punishable by death. Defines criminal justice official to include judges. Not yet assigned to committee

[MISSOURI SB 912 \(2007\)](#) See MISSOURI HB 1567. In Senate Judiciary and Civil & Criminal Jurisprudence committee

[TENNESSEE HB 2523 \(2008\)](#) Creates “Select Judicial Oversight Committee” to “verify that the various judges throughout the judicial system are properly applying and enforcing all statutory requirements enacted by the general assembly...” Committee’s 8 members chosen, 4 by Speaker of House and 4 Speaker of Senate, but no more than 1 lawyer may be selected per chamber. Committee to terminate in 2010. Not yet assigned to committee.

[TENNESSEE SB 2742 \(2008\)](#) See TENNESSEE HB 2523. In Senate Judiciary committee

[WEST VIRGINIA HB 2127 \(2008\)](#) Exempts magistrates from the licensing requirements for carrying a concealed weapon. In House Judiciary committee

[WEST VIRGINIA HB 2700 \(2008\)](#) Permits magistrates to carry concealed handguns without a permit. (Similar, but not identical, to HB 2127) In House Judiciary committee

[WEST VIRGINIA SB 109 \(2008\)](#) Set the term of incarceration for a person convicted of malicious assault on a police officer and other officers (including court security personnel) who are acting in an official capacity at ten years. In Senate Judiciary committee

## *Floor and Committee Activity*

[IDAHO SB 1270 \(2008\)](#) Increases from 3 to 4 number of judges on Court of Appeals. Judges to sit in panels of at least 3. Approved by Senate Judiciary committee

[IDAHO SB 1271 \(2008\)](#) Allows State Law Library to be moved from Supreme Court building and relocated elsewhere in Boise. Approved by Senate Judiciary committee

[IDAHO SB 1288 \(2008\)](#) Modifies district magistrate commissions, which appoint magistrate judges. Makes magistrate judge member of each commission a voting member. Makes trial court administrator of each district secretary of the commission. Disqualifies attorney member of the commission if a law partner of a magistrate candidate within the previous five years. Grants board of county commissioners' authority to waive the right to a resident magistrate judge. Approved by Senate Judiciary committee

[INDIANA HB 1096 \(2008\)](#) Amends various provisions concerning courts. Removes references to the clerk of the supreme court

from statutes concerning: (1) compensation of elected officials; and (2) annual economic interest statements filed by judicial officers or candidates for judicial office who are subject to election or a retention vote. (As of January 1, 2007, the clerk of the supreme court ceased being a statewide elected office and is now appointed by the chief justice.)

Approved by House Courts and Criminal Code committee and House Ways and Means committee. Amended on floor and currently pending on floor as amended

[INDIANA SB 329 \(2008\)](#) Allows a person serving as a full-time magistrate on July 1, 2010, and requires a person who begins serving as a full-time magistrate after that date, to become a participant in the judges' 1985 benefit system. Allows under certain conditions a judge or magistrate who is a participant in the 1985 system to transfer to

the 1985 system service credit earned in other system. Makes other pension modifications. Approved by Senate Pensions and Labor and as amended by Senate Appropriations committee

[NEW HAMPSHIRE HB 159 \(2007\)](#) Creates interbranch criminal and juvenile justice council to provide leadership, communication, and coordination among those involved in or affected by the criminal and juvenile justice systems. Approved as amended by House Criminal Justice and Public Safety committee

[NEW HAMPSHIRE SB 470 \(2008\)](#) Allows lobbyists and those connected with lobbyists to sit on committees established by the judicial branch. Approved by Senate Election Law and Internal Affairs committee

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