



MONTANANS FOR CHOICE TAKE ACTION

Judicial Integrity & Bodily Autonomy

ATTACKS ON THE COURTS ARE ATTACKS ON OUR RIGHTS

Montanans for Checks & Balances

If you care about reproductive rights, gender equality, and healthcare access, then you must also care about - and take action to protect - our democracy, its system of checks and balances, and the Montana Supreme Court.

The system of checks & balances is a cornerstone of our democracy, ensuring that no single branch of government gains too much power. Within this system, the judicial branch (i.e., the judiciary or “the courts”) can review laws passed by the legislative branch as well as assess actions taken by the executive branch to determine whether they are constitutional. The judicial branch is meant to be impartial (i.e., “justice is blind”); its role is to ensure that laws are applied equally to everyone, without bias or political influence. After all, no one wants to stand before a judge hoping for fair and impartial justice, only to have the judge ask you what political party you belong to or what religious views you hold, before ruling on your case.

IN THE UNITED STATES, WE ARE ALL GUARANTEED
equal justice before the law.

There are three co-equal branches of government: the executive (the President of the U.S. or the Governor of Montana), the legislative (the Senate and House of Representatives), and the judicial (courts and judges), each with the power to check the authority of the other branches to protect our rights.

The United States Constitution created a system of government where power is shared between the federal and state governments. Therefore, the federal government and each state government has its own court system, and how judges are selected to serve on courts (judicial selection) varies. *Federal* judges are nominated by the President and are confirmed by the Senate for lifetime appointments - a process heavily influenced by party politics. The selection of *state judges* is complex, varies considerably from state to state, and may be through partisan elections, nonpartisan elections, legislative elections, appointment by the governor, and assisted appointment through an independent nominating commission (also known as *merit selection* or the Missouri Plan)^[1]. In Montana, judges that serve on district courts and the state Supreme Court are selected through nonpartisan elections. Compared to partisan elections, nonpartisan judicial elections help to keep our courts impartial by reducing overt political influence and pressure^[2].

IN MONTANA, JUDGES THAT SERVE ON DISTRICT COURTS AND THE STATE SUPREME COURT ARE SELECTED THROUGH NONPARTISAN ELECTIONS. COMPARED TO PARTISAN ELECTIONS, NONPARTISAN JUDICIAL ELECTIONS HELP TO KEEP OUR COURTS IMPARTIAL BY REDUCING OVERT POLITICAL INFLUENCE AND PRESSURE.

In our system of government, **state courts get to interpret their own state constitutions; they are often the last line of defense against extremist state politicians trying to restrict our rights.** It is the state *Supreme Court* (not the U.S. Supreme Court!) that has the final say in interpreting their state's constitution^[3]. This means that the state courts also have the power and independence to uphold our constitutional rights when other branches of government try to undermine them. In many cases, state Supreme Courts are the final decision makers about issues that directly impact our lives: reproductive rights, gender equality, education, healthcare, the environment, housing, criminal justice, voting rights, Indigenous sovereignty, and many more.

Affirming Our Rights in Big Sky Country

The MT Supreme Court continues to play a critical role in protecting and upholding Montanans' constitutional rights - particularly those that are most under attack from extremist politicians. In 1999, in *Armstrong v. State*, the MT Supreme Court recognized that "Montana Constitution's explicit privacy guarantee protects the right to procreative autonomy, which includes the right of each person to make their own decision regarding whether to continue a pregnancy" ^[4]. Since that time, state laws attempting to restrict Montanans' access to abortion have been consistently struck down by the MT Supreme Court, reaffirming that the individual right of privacy protects the right to abortion (*Weems v. State*, 2019; *Planned Parenthood of Montana v. State*, 2022; *Weems v. State*, 2023; *Planned Parenthood of Montana v. State*, 2024) ^[5].

The delegates of the 1972 Montana Constitutional Convention intended for our explicit right of individual privacy to be expansive – to protect us from government intrusion into our private lives ^[6]. And, against the backdrop of increasing attacks on transgender rights, the MT Supreme Court continues to broadly interpret this right. In December 2024, the MT Supreme Court relied on decades of precedent when it held that the right of privacy could include medical treatment for young transgender people, affirming a lower court ruling that a ban on gender-affirming care is likely unconstitutional. In doing so, the MT Supreme Court became the first state high court to side with patients and their families in the cruel attacks against trans people's access to healthcare ^[7]. The preliminary injunction remains in place (so the ban on gender affirming care cannot be enforced) while the lawsuit plays out.

Beyond our right of individual privacy, the MT Supreme Court recently protected another precious constitutional right of Montanans. In December 2024, the MT Supreme Court upheld an earlier district court ruling in the landmark case *Held vs. Montana* - a lawsuit filed by 16 youth plaintiffs regarding a law which limited analysis of greenhouse gas emissions during environmental reviews. The MT Supreme Court found that this law violated Montana's constitutional protections for the right to a clean and healthful environment ^[8]. The world was watching this case play out as it was one of the first of its kind to hold a state government accountable for a livable climate, today and in the future. This unprecedented case shows the importance of the judiciary in affirming and upholding our constitutional rights.

Extremist attacks on the courts

As extremist governors and state legislators try to restrict our rights and control our bodies, many of their efforts are being thwarted by state courts upholding the constitutional rights of the people. And, since the *Dobbs* decision overturning *Roe v. Wade* in 2022, more state supreme courts have been issuing major decisions about abortion rights.^[9] This is why extremist politicians, many of whom are funded and supported by billionaires like Leonard Leo, have begun attacking the courts and attempting to undermine the critical role they play in our system of checks and balances^[10]. **Billionaires and extremists lawmakers think that if they can control the courts, they can control us.** These attacks on the courts primarily aim to diminish the power and independence of the courts, make it harder for judges to do their jobs, and make judicial selection more political^[11].

These attacks on the judiciary are increasing across the country and unfortunately, Montana is no exception. **In the following report, we provide an overview of the many proposed bills from the 2025 Montana Legislative Session that attacked our courts.**

Leonard Leo: A billionaire trying to manipulate the courts

Billionaire Leonard Leo is the shadow leader of a vast fundraising network seeking to reshape state and federal courts in the United States^[12]. Through his Concord Fund, Leo has contributed \$20.3 million dollars to the Republican Attorney Generals Association (RAGA) since 2014 in support of far-right legal causes and candidates across the nation. In addition, RAGA has paid Leo's public relations firm \$90,000 a year since 2020 for legal consultation and contributed \$200,000 to the Montana Republican Party in 2024 to support the reelection of far-right Attorney General Austin Knudsen and to support right-wing legal causes^[13] ^[14].

Leonard Leo outside the U.S. Supreme Court during the confirmation hearing for Justice Neil Gorsuch. Photo credit: Mark Peterson/Redux



2025 Legislative Attacks on the Courts

The 2025 Montana legislative session saw an onslaught of attacks from extremist politicians on fundamental aspects of democracy including the integrity of our state courts. **Nonpartisan judicial watchdog group *Friends of the Third Branch* monitored 43 bills (excluding resolutions/study bills) impacting the courts this session** ^[15]. Thanks to the courage of some of our representatives and the advocacy efforts of community members and civic organizations, 33 of these bills were defeated and one was withdrawn. Eight bills passed and were signed into law, and one passed but was vetoed by Governor Gianforte.

The bill vetoed by Governor Gianforte was SB 40, which would have mandated that the Montana Supreme Court record its deliberations and release them to the public after the conclusion of a case. SB 40 was written in a way that would have also required the disclosure of executive branch deliberations that are currently allowed to remain private. In vetoing the bill, Governor Gianforte said, “The Legislature itself has legislative privilege. Senate Bill 40 upsets the separation of powers by eroding the privilege of one branch of government while retaining it in another.” ^[16]

In the following pages, we list and briefly describe many of the bills introduced this session which attacked the courts. We separate the bills into those that passed both chambers and reached the Governor’s desk, and some of those that were introduced but which failed to pass.

The bills attacking our state courts were sponsored by 12 extremist legislators, many of whom are members of the Senate Select Committee on Judicial Oversight and Reform ^[17]. This committee proposed 21 of the 43 bills tracked by Friends of the Third Branch.



9 attacks on our courts that passed

SB 30 (Sen. McGillvray) - Conflict of interest disclosure requirements

Changes the rules on when judges must recuse themselves for having a conflict of interest; this law will make it easier for a political party or special interest group to claim that a judge has a conflict of interest.

SB 38 (Sen. Hertz) - Limit state liability in lawsuits (part 1)

Limits government financial liability in lawsuits, the overall goal of which is to limit the number of lawsuits filed against state government entities even when their actions don't comply with the law or their own rules.

SB 39 (Sen. Hertz) - Limit state liability in lawsuits (part 2)

Limits the amount paid in attorney fees if a government entity loses a civil lawsuit; this bill is designed to limit the number of lawsuits filed against the legislative and executive branches.

SB 40 (Sen. Hertz) - Inject partisan politics into Montana court deliberations

Makes the Montana Supreme Court and executive branch deliberation records public after a case has been decided. As mentioned above, this bill was vetoed by Governor Gianforte.

SB 41 (Sen. Emrich) - Take power away from Montana Supreme Court when substituting judges

Changes the rules of selecting a substitute judge in cases where a district judge cannot preside over a case. (Rule-making for courts is a role of the Supreme Court, not the legislature.)

SB 45 (Sen. Emrich) - Make the evaluation of judicial performance partisan

Creates a Judicial Performance Evaluation Commission within the state Department of Justice to "evaluate" district court judges and Supreme Court justices. The evaluation will be included in voter information guides.

SB 48 (Sen. Glimm) - Make judicial complaints during case hearings partisan & public

Allows citizens to make complaints about district or Supreme Court judges public at any time (thus politicizing the judicial process even while a case is being heard).

SB 97 (Sen. Fuller) - Give legislators power over which district court hears cases

Requires lawsuits challenging the constitutionality of newly enacted laws to be filed or moved to a county wholly or partially within the legislative district of the bill's primary sponsor.

HB 39 (Rep. Millett) - Let political parties give money to judicial candidates

Allows political parties to contribute directly to judicial campaigns, which has previously not been allowed.

11 attacks on our courts that failed

SB 15 (Sen. McGillvray) - Expand the grounds for impeachment of government officials

Would have made it easier to impeach a Montana Supreme Court Justice by expanding the offenses for which the legislative or executive branch could act to remove them from office.

SB 21 (Sen. Usher) - Allow legislators to overrule MT Supreme Court order

Would have allowed the Speaker of the House or the President of the Senate, along with the Governor or Attorney General, to agree to overrule and ignore an urgent order, called a “writ of mandamus” from the Montana Supreme Court.

SB 49 (Sen. Usher) - Exempt state legislators and governor from legal discipline

Would have exempted members of the legislature or executive branch from legal disciplinary procedures while they hold political office.

SB 395 (Sen. Emrich) - Make it harder for MT citizens to qualify for standing in lawsuits against the state

Would have made it much more difficult for citizens to get a hearing (referred to as having standing) before the Supreme Court. The landmark climate case, *Held v. Montana* [20], is one example of a case that would never have been heard if this law had been in effect.

SB 42, SB 543, HB 295, HB 751, HB 838 - Make elections of Montana judges partisan

Five bills were introduced that sought to make the election of Montana judges and Supreme Court Justices partisan. These bills were sponsored by Sen. Emrich, Sen. Galt, Rep. Fielder, Rep. Schubert, and Rep. Ler, respectively.

HB 30 (Rep. Deming) - Make it harder for MT Supreme to overturn unconstitutional laws

Would have mandated that the Montana Supreme Court use the notion of “beyond a reasonable doubt” (like in criminal proceedings) when determining the constitutionality of a proposed law.

HB 646 (Rep. Ler) - Limit who can vote in elections for Montana Supreme Court Justices

Would have required that Montana Supreme Court Justices be elected and appointed from districts, rather than through a statewide election.

KEEP PARTISAN POLITICS OUT OF OUR COURTS!

Extremist legislators introduced five bills which sought to make the election of Montana judges and Supreme Court justices partisan. This is a dangerous trend. Fortunately, none of these bills passed this session, but the fight isn’t over. We must work together to ensure that our judicial elections remain nonpartisan.

Take Action With Us!

We are grateful to everyone who took action during the 2025 legislative session to protect our rights. We have a lot of wins to celebrate, and we know that we still have a lot of work to do.

We created this report to raise awareness that extremist politicians, at both the federal and state levels, are attacking the judiciary because the courts are holding the line by protecting our rights. **We want all Montanans to know that attacks on the Montana Supreme Court are attacks on our rights – including our right of privacy. If you are a Montanan for Choice, you must also be a Montanan for Checks & Balances**, because preserving the powers, integrity, and nonpartisanship of our Montana Supreme Court is critical for preserving and upholding our constitutional rights.



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Follow us on social media and [sign up for our e-newsletters](#) to receive more information and hear about opportunities for you to take action.



Learn how YOUR representatives voted on the bills attacking our courts by checking our [Legislative Scorecard](#).



Hold YOUR representatives accountable to their actions.

House Representatives have 2-year terms and many will run for re-election in 2026, along with about half of all state Senators.

CITATIONS

[1] Judicial selection in the states - Ballotpedia. Retrieved August 5, 2025. https://ballotpedia.org/Judicial_selection_in_the_states

[2] Fact Sheet - Issue: Partisan Election of Judges and Justices. Friends of the Third Branch. <https://friendsofthethirdbranch.org/wp-content/uploads/2025/02/Judicial-Partisan-Elections-Fact-Sheet-1.pdf>

[3] Bannon, A. (2021, November 9). The power of state courts in securing abortion access: 'It's time to give them center stage.' Brennan Center for Justice. <https://www.brennancenter.org/our-work/analysis-opinion/power-state-courts-securig-abortion-access-its-time-give-them-center>

[4] Abortion Defense Network. (2025). Know your state's abortion Laws: a guide for medical professionals. Retrieved June 25, 2025, from <https://abortiondefensennetwork.org/wp-content/uploads/2025/04/Montana-April-2025.pdf>

[5] Center for Reproductive Rights. (2025, May 14). State Constitutions and Abortion Rights - Center for Reproductive Rights. <https://reproductiverights.org/maps/state-constitutions-and-abortion-rights/?state=MT#state-tab-00>

[6] Ragar, S., & Amestoy, A. (2022, December 20). What's so special about Montana's privacy protections? Montana Public Radio. <https://www.mtp.org/montana-news/2022-12-07/why-does-montana-have-such-strong-privacy-protections>

[7] Abortion Rights and Transgender Rights Are Intertwined. (2025, April 1). State Court Report. <https://statecourtreport.org/our-work/analysis-opinion/abortion-rights-and-transgender-rights-are-intertwined>

[8] Montana Supreme Court affirms decision in historic youth climate case. (2025, December 19). Stateline. <https://stateline.org/2024/12/19/montana-supreme-court-affirms-decision-in-historic-youth-climate-case/>

[9] Legislative Assaults on State Courts in 2024. (2025, January 28). Brennan Center for Justice. <https://www.brennancenter.org/our-work/research-reports/legislative-assaults-state-courts-2024>

[10] Brown, E., Boburg, S., & O'Connell, J. (2023, May 8). Judicial activist directed fees to Clarence Thomas's wife, urged 'no mention of Ginni.' The Washington Post. <https://www.washingtonpost.com/investigations/2023/05/04/leonard-leo-clarence-ginni-thomas-conway/>

[11] Assaults on the courts. (2025, January 28). Brennan Center for Justice. <https://www.brennancenter.org/issues/strengthen-our-courts/promote-fair-courts/assaults-courts>

[12] Brown, E., Boburg, S., & O'Connell, J. (2023, May 8). Judicial activist directed fees to Clarence Thomas's wife, urged 'no mention of Ginni.' The Washington Post. <https://www.washingtonpost.com/investigations/2023/05/04/leonard-leo-clarence-ginni-thomas-conway/>

[13] Sweitzer, A. K. B. M. (2024, January 9). We don't talk about Leonard: the man behind the right's Supreme Court supermajority. ProPublica. <https://www.propublica.org/article/we-dont-talk-about-leonard-leo-supreme-court-supermajority>

[14] Arniak, D. (2024, October 17). Leonard Leo's Concord Fund again tops funders of Republican AG Group in third quarter - EXPOSEDbyCMD. EXPOSEDbyCMD. <https://www.exposedbycmd.org/2024/10/15/leonard-leos-concord-fund-again-tops-funders-of-republican-ag-group-in-third-quarter/>

[15] Friends of the Third Branch. (2025, April 24). 2025 legislative session - friends of the third branch. <https://friendsofthethirdbranch.org/legislature/2025-legislative-session/>

[16] Gianforte vetoes bills that would have limited executive, judicial privilege. (2025, May 20). Daily Montanan. Retrieved June 9, 2025, from <https://dailymontanan.com/2025/05/20/gianforte-vetoes-bills-that-would-have-limited-executive-judicial-privilege/>

[17] Senate Select Committee on Judicial Oversight and Reform - Montana State Legislature. (n.d.). <https://archive.legmt.gov/committees/other-groups/sjor/>



MONTANANS FOR CHOICE

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OUR CONSTITUTION COURTS CHOICE

KEEP MONTANA
COURTS NONPARTISAN



MONTANANS FOR CHOICE

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