

## Judges, Bar Leaders, and Others Speak Out Against Court Attacks

Politicians in Raleigh have tried to dramatically change North Carolina's voting rules, but the courts have repeatedly overruled them. Now they're attempting to take control of the courts by changing the way judges are elected in North Carolina. Bills currently circulating in the N.C. House and Senate would shorten judicial terms, gerrymander court districts, or eliminate elections to allow politicians to appoint judges.

In response, leaders from the legal community (regardless of position or party politics) have overwhelmingly opposed these proposals, pushing back against attacks on the judiciary.

### Judicial Gerrymandering (HB717)

"As there are significant other resource needs within the courts, I am concerned that this may divert monies that could be used for other things that will now be spent on travel reimbursements. **It seems it would be less efficient and more costly.**"

—Wake County District Attorney Lorrin Freeman

(<http://www.ncpolicywatch.com/2017/06/28/politically-driven-judicial-redistricting-haltedfor-time/>)

"This is not a change that was sought by court officials nor voters in our county to my knowledge... We currently have a politically diverse district court bench. **The speed with which this is moving has not provided an opportunity for a thorough review of how it will impact voters.**"

—Wake County District Attorney Lorrin Freeman

(<http://www.ncpolicywatch.com/2017/06/28/politically-driven-judicial-redistricting-haltedfor-time/>)

"If Hoke goes into Moore, Hoke is a Democratic district and Moore is Republican, so **I'm afraid my little citizens in Hoke County would be forgotten. That is my hometown... Small is not insignificant.**"

—Scotland County District Attorney Kristy Newton

(<http://www.ncpolicywatch.com/2017/06/28/politically-driven-judicial-redistricting-haltedfor-time/>)

**"This isn't about good judicial policy, it's about politics."**

—Robeson County District Attorney Luther Johnson Britt III

(<http://www.ncpolicywatch.com/2017/06/28/politically-driven-judicial-redistricting-haltedfor-time/>)

"Next came the judicial district maps. With three days remaining in the legislative session, new maps were tweeted out — **gerrymandered to guarantee the election of more Republicans and fewer African-Americans.** It didn't stop there."

—Rep. Marcia Morey, former Chief District Court Judge in Durham County

(<http://www.wral.com/marcia-morey-legislative-leaders-making-power-grab-to-control-n-c-courts/17032573/>)

“Not only does it put me in a Republican district, it disenfranchises the large part of African-Americans who would be a voting bloc for me... If you look at the lines in Buncombe County as it relates to me as an African-American, **there’s no question the race issue has come into play.**”

—Chief District Court Judge Calvin Hill, the only Black judge on the District Court in Buncombe County ([https://www.nytimes.com/2017/10/18/us/north-carolina-republicans-gerrymander-judges-.html?\\_r=1](https://www.nytimes.com/2017/10/18/us/north-carolina-republicans-gerrymander-judges-.html?_r=1))

“It is the position of the NCBA that **any redistricting of Judicial and Prosecutorial Districts should be based upon an open and robust process that includes input from the Administrative Office of the Courts, Judges, District Attorneys, members of the bar, and other stakeholders in the judicial system**, so that the result increases efficiency and access to justice, and enhances trust and confidence in our legal system on the part of the citizens of our state. Therefore, **the NCBA opposes HB 717.**”

—North Carolina Bar Association statement, July 19, 2017  
(<https://www.ncbar.org/news/ncba-opposes-house-bill-717/>)

“We just submit to you that you need to take the time necessary — and in a few short months — we would say that you need to spend time looking at these other partnerships and how all these things will be affected because **it affects the administration of justice.**”

—Shelby Benton, Former President, NCBA  
([democracync.org/wp-content/uploads/2017/11/Shelby-Benton-Former-Pres-NC-Bar-Association.pdf](http://democracync.org/wp-content/uploads/2017/11/Shelby-Benton-Former-Pres-NC-Bar-Association.pdf))

“...we think that **redistricting has to be based on a deliberate and open process** that includes the input of an array of stakeholders: judges, and district attorneys, clerks of court, law enforcement officers, lawyers, and members of the public.”

—Caryn McNeill, Current President of the NCBA, speaking in opposition to HB717  
(<https://democracync.org/wp-content/uploads/2017/11/Caryn-McNeill-President-NC-Bar-Association.pdf>)

“[I]f you’re going to take it up once in 60 years, **we would submit to you that you should spend deliberate and transparent time in making those decisions.**”

—Shelby Benton, Former President of NCBA, speaking in opposition to HB717  
(<https://democracync.org/wp-content/uploads/2017/11/Shelby-Benton-Former-Pres-NC-Bar-Association.pdf>)

“North Carolina’s judicial districts should be evaluated to ensure the fair and accessible administration of justice. **The process should be thoughtful and deliberate, with input from interested parties across the state. Districts should not be drawn based purely on political gain.** The Courts Commission is the appropriate and statutorily authorized body to make recommendations to the General Assembly.

**Redrawing judicial districts is a good idea. Let’s make sure we get it right.**”

—Becki Gray, Senior V.P. at the John Locke Foundation on slowing down the judicial redistricting process  
(<https://www.carolinajournal.com/opinion-article/redrawing-judicial-districts-make-sure-we-get-it-right>)

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“Although some realignment and redistricting in the courts might be needed, the process needs to be done in a transparent and orderly fashion with input from a wide variety of citizens, legislators, and court officials. **The maps as presented in House Bill 717 force turnover in a short period of time that will result in disruption to the bench and the administration of justice.** In several districts between twenty (20) to fifty (50) percent of the District Court Judges will be replaced by 2020, either by double-bunking or by having their positions eliminated. These judges will be replaced without any regard to their fitness or job performance — which will result in the loss of years of judicial experience.”  
—District Court Judge Athena Fox Brooks, on behalf of the NC District Court Judges’ Association  
(<https://democracync.org/wp-content/uploads/2017/11/Judge-Athena-Fox-Brooks-before-the-NC-House-Judicial-Redistricting-Committee-on-Sept.pdf>)

“...I’m urging this body just to take a measured approach, to do your research, to gather your facts, and to make a systematic, collaborative decision on what is going to be best for our court system... the North Carolina Court System was ranked seventh in the country in its legal climate. Two of the reasons we rank so high are because of our stability and our predictability in the system that we offer.”  
—Superior Court Judge Joe Crosswhite, President of the NC Conference of Superior Court Judges  
(<https://democracync.org/wp-content/uploads/2017/11/Judge-Joe-Crosswhite.pdf>)

“...the bottom line of my message is: **We don’t need to rush to make any changes. We have the time.** We have the luxury. We have the experts on the ground. We need to let this continue on, let everybody speak with their representatives, speak with the judges, gather the information, and then make what changes they think are appropriate in a systematic and collective manner.”  
—Superior Court Judge Joe Crosswhite, President of the NC Conference of Superior Court Judges  
(<https://democracync.org/wp-content/uploads/2017/11/Judge-Joe-Crosswhite.pdf>).

“And it took the Bell Commission four years....It was a deliberative, concerted effort and it has spanned three generations in success. And **I think that formula of looking backwards at history, and looking forward to how we can best design our legal system, demands that same method and attention.**”  
—Chief District Court Judge Robert Stiehl, 12th Judicial District, Fayetteville, Cumberland County  
(<https://democracync.org/wp-content/uploads/2017/11/Judge-Robert-Stiehl.pdf>).

“[T]he State Bar urges this committee to keep the effective administration of justice for the citizens of this state as your primary goal when considering proposed revisions to the district maps. **We would urge that you be respectful of historical geographical boundaries in making your decisions and not split up counties in the creation of districts.** We would also urge that voting on this matter be held over to the next session to allow all stakeholders time to review and provide input on these important decisions.”  
—Peter Bolac, Legislative Liaison, North Carolina State Bar, in opposing HB717  
(<https://democracync.org/wp-content/uploads/2017/11/Peter-Bolac-NC-State-Bar-comments.pdf>)

## Elimination of 2018 Judicial Primary (SB656)

“Given the number of candidates, the short time for campaigning, the low attention paid to judicial races, and the drop-off in voting for judgeships, **someone is likely to win with a small percentage of votes. . . .**”

“In 2012 about 4.5 million North Carolinians voted for president, and over 4.3 million for superintendent of public instruction, but by the time voters got down the ballot to the Supreme Court only 3.5 million were still voting...**How many voters will skip the Court of Appeals vacancy when they see 19 unfamiliar names? And what percentage of the total votes will any one candidate get?”**

—Michael Crowell, a Chapel Hill attorney and former professor at the UNC School of Government (<http://www.ncpolicywatch.com/2017/10/12/experts-express-concerns-consequences-eliminating-judicial-primary-elections/>).

“Eliminating primaries would force voters to pick from perhaps dozens of candidates with ‘winners’ who could garner merely 20 percent of the vote. **What kind of ‘accountability’ is that?”**

—N.C. Rep. Marcia Morey, former Chief District Court Judge in Durham County ([wral.com/marcia-morey-legislative-leaders-making-power-grab-to-control-n-c-courts/17032573/](http://wral.com/marcia-morey-legislative-leaders-making-power-grab-to-control-n-c-courts/17032573/)).

## Cutting Judicial Terms (SB698)

“I regret that Judge James H. Pou Bailey is not here today to express his thoughts on what he probably would have perceived this legislation to be... a deliberate attack on the independence of the judiciary, an act that I suspect he would have seen as an affront to the rule of law, an attempt to compromise the integrity of the separation of powers contemplated by the North Carolina Constitution — and as an act which Judge Bailey would likely have viewed as **a threat of punishment and retribution upon an independent judiciary inclined to strike down legislation that is unconstitutional on its face.**”

— Wake County Superior Court Judge Donald Stephens (<http://www.newsobserver.com/news/local/article181684616.html#storylink=cpy>; <http://www.heraldsun.com/news/local/article181684616.html> ).

“**Nowhere in America do voters elect their general jurisdiction judges for two-year terms of office...This is as it should be.** Electing judges for two-year terms would force judges to campaign and raise money constantly, and would disrupt the administration of justice... Judicial terms of office are longer than executive and legislative terms of office because judges have a different function... Judges are accountable, first and foremost, to the federal and state constitutions and to the law. They apply the law uniformly, and equal justice under law is the ultimate goal of any court system. The people of North Carolina should have a meaningful role in the judicial selection and retention process, just as citizens of states around the country do. **But two-year terms are not the answer.**”

— N.C. Supreme Court Chief Justice Mark Martin, a Republican whose term is set to end in 2022

(<http://www.newsobserver.com/news/local/article181684616.html#storylink=cpy;>  
<http://www.heraldsun.com/news/local/article181684616.html> )

**“Requiring judges and justices to run for office every two years is inconsistent with principles of judicial independence, would erode trust and confidence in our legal system and ... impede the administration of justice in North Carolina.”**

—NC State Bar Association Resolution

(<http://www.newsobserver.com/news/local/article181684616.html#storylink=cpy;>  
<http://www.heraldsun.com/news/local/article181684616.html> )

**“It would appear that on the face of it, that this two-year proposal is a punitive threat... the sort of intimation that we can do that — is what concerns me most. That’s way over the top. So over the top.”**

—Former N.C. Supreme Court justice Bob Orr, a Republican

(<http://www.newsobserver.com/news/local/article181684616.html#storylink=cpy;>  
<http://www.heraldsun.com/news/local/article181684616.html> )

**“There’s this sense of ‘we have all the power, so if we want to shaft you, we’ll shaft you... I appeal to my fellow Republicans: Let’s be the party of good government. Let’s not be the party of coercive government.”**

—Republican Bob Orr, a Former N.C. Supreme Court Justice

(<http://www.newsobserver.com/news/local/article181684616.html#storylink=cpy;>  
<http://www.heraldsun.com/news/local/article181684616.html> )

**“This is not about better justice for North Carolinians. It is about the legislative leadership’s anger over recent court decisions declaring many of their laws unconstitutional, particularly a decision that said they were voted into power by illegal, racially gerrymandered districts.”**

—N.C. Rep. Marcia Morey, Former Chief District Court Judge in Durham County

(<http://www.wral.com/marcia-morey-legislative-leaders-making-power-grab-to-control-n-c-courts/17032573/>)

“No other state in the country has two-year terms for judges. This proposal, offered up by Sen. Bill Rabon, a veterinarian, would force judges and justices to continuously campaign for re-election rather than doing their work on the bench — deciding child custody cases, upholding abused children’s rights, hearing criminal cases and deciding appeals. Courtrooms throughout North Carolina are jammed with people seeking resolutions to pressing legal matters. They want fair and impartial justice. People deserve better than having judges as red and blue politicians constantly campaigning, raising money, and fearful of making tough legal decisions that could cost them their seats on the bench. Our fair and independent judicial system is at risk. **People deserve experienced judges and justices, elected by the voters to dispense justice and interpret the laws – not to hand out campaign buttons and bumper stickers.”**

—N.C. Rep. Marcia Morey, Former Chief District Court Judge in Durham County

(<http://www.wral.com/marcia-morey-legislative-leaders-making-power-grab-to-control-n-c-courts/17032573/>).

“This is really an **unnecessary step to try to bully the judges into supporting some of the legislators’ plans**, including redistricting.”

—Retired Court of Appeals Judge Doug McCullough

(<http://pulse.ncpolicywatch.org/2017/10/24/former-gop-judge-justice-question-motive-measure-shorter-judicial-term-limits/#sthash.gdDFS8TS.Bs7n9b8D.dpbs>)

“**Judges would be forced to run constantly, just like legislators, and we’re not legislators.**”

—Retired Court of Appeals Judge Doug McCullough

(<http://pulse.ncpolicywatch.org/2017/10/24/former-gop-judge-justice-question-motive-measure-shorter-judicial-term-limits/#sthash.gdDFS8TS.Bs7n9b8D.dpbs>).

“I think it’s just critical that the judiciary continue to enjoy the public perception that **it’s a body not governed by politics and instead governed by the law.**”

—Former state Supreme Court Justice Bob Edmunds

(<http://pulse.ncpolicywatch.org/2017/10/24/former-gop-judge-justice-question-motive-measure-shorter-judicial-term-limits/#sthash.gdDFS8TS.Bs7n9b8D.dpbs>)

“Judges, when they take the bench, usually give up a [law] practice... For a two-year term, that’s going to discourage and filter out a lot of candidates, well-qualified candidates....I **question the wisdom of it.**”

--Former state Supreme Court Justice Bob Edmunds

(<http://pulse.ncpolicywatch.org/2017/10/24/former-gop-judge-justice-question-motive-measure-shorter-judicial-term-limits/#sthash.gdDFS8TS.Bs7n9b8D.dpbs>)

## **Legislative Appointment of Judges (Proposed)**

“Jim Blaine — Phil Berger’s chief of staff — told the judges directly at a meeting of the The N.C. Association of District Court Judges board of governors ... that **the goal of House Bill 717, the judicial redistricting bill, is to add Republican judges to the judiciary.**”

—Melissa Boughton, Reporter, NC Policywatch

(<http://www.ncpolicywatch.com/2017/08/15/merit-maps-judges-futures-come-clashing-legislative-proposals/>).

“North Carolina’s legislators may hope to shield judges from undue outside influence and conflicts of interest, but the limited evidence that exists suggests that a legislative appointment system is unlikely to alleviate these problems... In fact, legislative appointments can introduce significant new complications: they can enable favoritism towards legislators and those close to them, breed corruption, produce and suffer from governmental dysfunction, and undermine judicial independence — all while continuing to provide a path for special interests to unduly influence nomination.”

—Douglas Keith and Laila Robbins, Brennan Center for Justice

([http://www.brennancenter.org/sites/default/files/analysis/North\\_Carolina.pdf](http://www.brennancenter.org/sites/default/files/analysis/North_Carolina.pdf);

<http://www.heraldsun.com/news/local/article181684616.html>)

## Partisan Judicial Races

“First came placing partisan labels on judicial election ballots – the antithesis to being fair and impartial arbiters of justice. **In nearly 100 years, North Carolina became the only state in the country to move towards partisan elections.**”

—N.C. Rep. Marcia Morey (D-Durham), Former Chief District Court Judge in Durham County  
(<http://www.wral.com/marcia-morey-legislative-leaders-making-power-grab-to-control-n-c-courts/17032573/>).

“We’re the first state since 1921 moving toward partisan elections for judges... I feel like we’re taking off the black robes and we’re putting on red and blue robes, and **does that really serve the interests of justice?**”

—N.C. Rep. Marcia Morey (D-Durham), Former Chief District Court Judge in Durham County  
([https://www.nytimes.com/2017/10/18/us/north-carolina-republicans-gerrymander-judges-.html?\\_r=1](https://www.nytimes.com/2017/10/18/us/north-carolina-republicans-gerrymander-judges-.html?_r=1))

## Importance of an Independent Judiciary

“Because legislators have so often grossly overreached and impartial judges have properly stepped in, **‘war’ on a constitutionally mandated separate, independent, co-equal branch of government, the judiciary, has been declared.**”

—N.C. Rep. Joe John (D-Wake), a former Court of Appeals judge  
(<http://pulse.ncpolicywatch.org/2017/10/17/former-gop-supreme-court-justice-2-year-terms-amendment-continued-effort-intimidate-judiciary/#sthash.Mf2odTB3.fCc7ezFD.dpbs>)

“This legislature doesn’t like the courts, doesn’t like the judges on the court... It wants to change who they are, and they don’t seem to care how they go about it.”

—Michael Crowell, Former Associate Director UNC Institute of Government at UNC  
([https://www.nytimes.com/2017/10/18/us/north-carolina-republicans-gerrymander-judges-.html?\\_r=1](https://www.nytimes.com/2017/10/18/us/north-carolina-republicans-gerrymander-judges-.html?_r=1))

“The courts’ role in our democracy is to protect rights and uphold the rule of law, particularly when it comes to the other political branches... To do this, **judges need to be able to act independently and without fear of retribution from the political branches, and the public needs to have confidence that courts are not just another political actor.**”

—Douglas Keith, Counsel, the Democracy Program, Brennan Center for Justice  
(<http://www.ncpolicywatch.com/2017/10/12/experts-express-concerns-consequences-eliminating-judicial-primary-elections/>)

“What’s happening in North Carolina makes it harder for judges to both be and appear independent.”

—Douglas Keith, Counsel, the Democracy Program, Brennan Center for Justice  
(<http://www.ncpolicywatch.com/2017/10/12/experts-express-concerns-consequences-eliminating-judicial-primary-elections/>).