

**Comments: Republican Winter Kickoff
February 6, 2026**

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Outline of Comments on CI-132 and Partisan Judicial Elections

by Professor Rob Natelson

Hello, everyone. I'm honored to be with you. Frankly, I wish I could be there in Montana rather than in my Colorado headquarters in exile. But in this life, you the best you can.

Also, I should emphasize that I'm speaking for myself today, and not for the Independence Institute or the Mountain States Policy Center.

I've been asked to address Constitutional Initiative 132, which would lock Montana into a failed election system for state supreme court justices. In order to understand what is at stake, however, I'd like to review some recent history with you.

In 2020, Montana voters elected a Republican governor, a Republican Senate, and a Republican state house. Montanans reaffirmed this decision in 2022 and again in 2024. Clearly, Montanans favored the Republican agenda over the Democrat one. And once elected, the legislature and governor duly proceeded to keep their campaign promises.

But what ensued in the courts seems to be absolutely unprecedented in American history. Democrats and other leftists sued again and again to upend perfectly reasonable Republican legislation. Since the voters first elected the Republican trifecta six years ago, there have been 73 lawsuits filed to block Republican bills, nearly all filed by left wing activists.

The state judiciary's response to these lawsuits has been dismaying to say the least. The Montana Supreme Court has long been a partisan Democrat bench, and some district judges have learned that they must act like partisan Democrats, too, if they don't want to be reversed.

In some cases, the courts have made decisions when the plaintiffs really had no judicial standing at all. And in many cases, the courts have struck down democratically-adopted laws, generally using far-fetched interpretations of the Montana constitution.

Just in case there are any of our friends from the media in the room,, I'd like to make that last point again: The fault here is not with the legislature. Republican lawmakers have not been deliberately or inadvertently passing unconstitutional bills. The problem arises because the courts are both misinterpreting the state constitution and because they are ignoring their own rule that democratically-adopted laws must be sustained unless proved unconstitutional beyond a reasonable doubt.

Here are a few examples of what I mean:

House Bill 176, by Rep. Sharon Greef—to move the voter registration deadline back just a single day—was struck down by the Montana Supreme Court.

House Bill 121, sponsored by Rep. Kerri Seekins-Crowe was designed to protect women's bathrooms and private spaces from male intruders. It was blocked by the Montana Supreme Court.

House Bill 112 by Representative, now Senator, John Fuller, was designed to protect women's sports. It was overturned by the Montana Supreme Court.

Senate Bill 99, also by Sen. John Fuller, would have protected children against surgical mutilation. It was blocked by the Montana Supreme Court.

House Bill 325 by Representative, now Senator, Barry Usher, would allow Montanans to vote for their Supreme Court justices in districts rather than statewide. It was overturned in a clearly-self interested decision by the justices themselves.

House Bill 562, by Rep. (now Senator) Sue Vinton, would have set up Montana's first real charter schools. This is an area in which Montana lags far behind almost every other state, but that bill, too, was blocked by a court.

House Bill 102 by Rep. Seth Berglee, would have allowed students—particularly vulnerable young women—to protect themselves by exercising their 2nd amendment rights on university campuses. That also was overturned by the Montana Supreme Court.

Senate Bill 169 by Senator Mike Cuffe, to strengthen voter ID—a keystone of free and fair elections—was quashed by the Montana Supreme Court

House Bill 506, by Rep. Paul Fielder, to prohibit ballots from being sent to minors under 18, was overturned by the Montana Supreme Court.

And even House Bill 136 by Rep. Lois Sheldon Galloway, which would have protected unborn babies from agonizing pain, that, too, was overturned by the Montana Supreme Court.

Now, at this point I have to tell you something about myself because it is relevant to something that is much more important. As many of you know, I was active in Montana politics for many years, and polled second in the 2000 gubernatorial primaries. What you may not be aware of is that I've also had 56 years experience in the field of law and legal history. I've practiced, taught, researched, published, and testified. And at one time or another, I've worked with the legal systems of all 50 states.

So with that background, let me tell you that, as far as I know, the attack on the Montana legislature by leftist litigators and the state judiciary is unprecedented in its scope and audacity

anywhere in the United States, at any time in history.

If you can think back to your high school history class: President Franklin Roosevelt went on a rampage against the U.S. Supreme Court and wanted to pack the bench—why? Because he'd lost three cases. Thomas Jefferson and James Madison became deeply upset with John Marshall's Supreme Court because they'd lost a single case.

What we are seeing in Montana, by contrast, is an audacious, massive, and highly partisan assault on democracy that exceeds those historical controversies by many orders of magnitude.

If that does not convince you that the Montana Supreme Court is broken, then get the details in the papers I wrote in 2012 for the Montana Policy Institute and in 2024 for the Frontier Institute. Both papers are readily available on line.

But the point is not just that the Montana Supreme Court is dysfunctional. It also is highly partisan. The present pretense of non-partisanship is just that—a pretense.

So what do we do about it? If this were a normal situation, I'd say that the way to reform the court is to adopt constitutional amendments and elect better justices. But the problem with the constitutional amendment route is that the Montana Supreme Court has assumed an absolute veto over the constitutional amendment process in Montana. This is a subject I'm addressing in my series of op-eds on the Montana constitution written for the Mountain States Policy Center.

As for electing better justices, in the current stacked system that is extraordinary difficult—the election of Chief Justice Cory Swanson was highly unusual, and he remains only one justice out of seven. Electing better justices is extraordinarily difficult because Montana's judicial elections are structured in ways that magnify the influence of moneyed leftwing interests. This is true largely because the current system denies voters the information they need to make informed choices.

Some people favor abandoning judicial elections altogether and switching to an appointive system. By contrast, I believe we should keep judicial elections, but make them free, fair, and democratic instead of fixed.

In the 2025 session, your Republican legislature took an important step in this direction by passing Senator Tom McGillvray's bill for a judicial performance evaluation system. This new mechanism should provide the public with open and fair assessment of judges and justices so voters can assess their performance.

Another necessary step is to stop electing all supreme court justices statewide—which only magnifies the advantage of certain favored candidates—and start electing them by district. In a large state like Montana with widely-separated population centers, people are far more likely to know candidates from their own area than from other parts of the state.

On two occasions, Republican legislatures have passed district bills. The first was sponsored by my dear friend the late Senator Joe Balyeat and by our own Art Wittich. The second was

sponsored by the great Senator Barry Usher.

Although the justices of the Montana Supreme Court had an obvious conflict of interest in judging these bills, they failed to recuse themselves. And they struck down both measures.

Now for those of you who might think the Montana Supreme Court has any justification for its attack on the legislature, I want you to consider this: In the first district case, the justices voided the law because, they claimed, the legislature has no power to define the qualification of judges.

Yet the court failed to mention that Article IV, § 4 of the Montana Constitution specifically gives the legislature that power. The court dealt with that part of the constitution by simply ignoring it.

And in both cases, the court claimed that electing a state supreme court by district couldn't be done. The court said that election by district was "inimicable to the judicial function."

But that statement is demonstrably untrue. All throughout American history, states and territories frequently have chosen their supreme court justices by district—and with good results. Historical examples include Connecticut, Illinois, Louisiana, and several federal territories, including the Territory of Montana.

Today, at least four states elect their supreme court justices by district. They include Kentucky, Oklahoma, Oregon, and our neighboring state of South Dakota.

In the districting cases, the Montana Supreme Court dealt with these inconvenient facts, once again, simply by ignoring them.

Bottom line: The legislature should pass a district bill again and confront the court directly with the truth.

And finally, we come to a third important reform. This reform is to allow candidates to run with a political party designation. Apologists for the current broken system are sponsoring CI-132 to try to prevent that.

I don't know why any well-meaning person would oppose party designation. Allowing candidates to declare their party affiliation would seem to be a basic First Amendment right.

But more to the point, as the current situation in Montana amply demonstrates, so-called "non-partisan" elections do not banish politics from the process. They merely hide the politics from view so only a privileged few know who stands for what, and ordinary voters remain in the dark.

In case you think that partisan elections are inconsistent with the judicial role, think again. Alabama, Illinois, Louisiana, New Mexico, North Carolina, Ohio, Pennsylvania, and Texas all elect their supreme court justices on party tickets. During the early 20th century, New York created the finest judiciary in the nation that way—until the insiders deemed that to be

inconvenient to themselves, and stopped it.

There's more: When candidates are permitted to adopt party labels, dramatic changes happen because the voters suddenly have information they did not have.

A good recent example of this is what has happened in North Carolina.

North Carolina is now fundamentally a Republican state. Democrats can still be elected—the current governor is a Democrat—but 60 percent of the seats in both houses are held by the Republicans.

Until 2018, the North Carolina Supreme Court was elected on a supposedly non-partisan basis. This enabled special interests to hide the affiliation of judicial candidates from the people. As a result, the state's predominately Republican voters inadvertently elected a state supreme court that was 6-1 Democrat.

In 2018, however, the legislature mandated partisan elections. Within 2 election cycles, the 6-1 Democrat majority had become a 5-2 Republican majority. And the state's intermediate appellate court underwent a similar shift.

Clearly, when voters were provided with crucial information, they made different choices than when that information was hidden from them. That's why a free and fair information flow is central to a free and fair democratic process.

I urge you to consider CI-132 against that backdrop. There is nothing “non-partisan” about so-called non-partisan elections, and there is nothing non-partisan about CI-132. In fact, it is a far left, partisan attack on democracy.

CI-132 attacks democracy by freezing in place a dysfunctional and highly partisan state supreme court that repeatedly and without justification has overturned the will of the people. CI-132 denies crucial information to Montana voters so judges and lawyers and other insiders can continue to operate a sort of judicial oligarchy in defiance of the people of Montana.

I know that CI-132 is initially popular in the polls. But ignore the polls. Part of what election campaigns are about is changing people's minds.

Tell Montanans what is really at stake: Will judicial elections be dominated by a few self-interested groups? Or will we open the door for free and fair democratic elections and a better judicial system all around?

Montanans can do that only by defeating CI-132.

Thank you. It's been great to be with you.