



# Dismantling Democracy: Attacks on the Judiciary

BY JESSICA BRAND

**A**t a Federalist Society event in late 2025, former Department of Justice (DOJ) Chief of Staff Chad Mizelle argued that Congress should impeach federal judges who found the president's policies unlawful. "This [opposition] is a problem of leftist politics" and not the law, he claimed. Adam Lynch, *Trump AG Ally "Turns Heads" at Conservative Legal Conference with New Power Grab Ploy*, AlterNet (Nov. 7, 2025), <https://tinyurl.com/nx98shv3>. His comments came the same week that two senators and one House member demanded the impeachment of D.C. District Court Chief Judge James Boasberg, who has presided over high-profile litigation surrounding the administration's immigration policies, and the same month that a Texas congressman filed articles of impeachment against him. Press Release, Eric Schmitt, US Sen. for Mo., Senator Schmitt Leads

Colleagues in Calling for the Suspension, Impeachment of Judge Boasberg (Nov. 17, 2025), <https://tinyurl.com/4wfafduj>; Press Release, Brandon Gill, Congressman, TX, Rep. Gill Files Impeachment Articles Against Judge Boasberg Following Arctic Frost Scandal (Nov. 4, 2025), <https://tinyurl.com/z3jc9bcw>. These stories barely made the news.

Just a few years ago, both media and most elected officials would have decried these attacks on a coequal branch of government as unprecedented and dangerous. Now, they are the new norm. When judges rule against the administration, White House support-

**JESSICA BRAND** is the founder and executive director of the Wren Collective and the Wren Action Group. She is a member of the ABA's Task Force on Prosecutorial Discretion.

ers call for their ouster, the administration leads the charge, and high-level officials simply disobey judicial orders. Megan Lebowitz & Alexandra Marquez, *Kristi Noem Says Deportation Operation Decisions Are Hers Amid Case over Flights to El Salvador*, NBC News (Nov. 30, 2025), <https://tinyurl.com/4veptvsy>.

But the attacks on the judiciary are not just coming from the White House or its allies. They also are not exclusively aimed at the federal judges blocking the president's power and agenda.

For years at the state level, elected officials who want to end local control and subvert a key check on illegal power have used "woke judges" as a rallying cry. Indeed, many states are way ahead of Washington, acting as laboratories for the destruction of judicial independence. Some of these threads proliferate on X (Twitter) and, to a lesser extent, other social media platforms, made by people with thousands or even millions of followers. But with less fanfare and more impact, attacks on judicial independence have recently appeared in boring bills that give legislators enormous power to remove or discipline judges they simply do not like.

The state-level offensive against state and local judges is perhaps more dangerous than federal attempts because it is more effective, framed as protecting the public and wrapped in language about judges releasing too many people pretrial, ruling in favor of the defense too often, or hewing too closely to the protection of civil rights for non-majority communities. Couching these attacks under the pretext of public safety is both cynical and smart because so many politicians are afraid of appearing soft on crime and therefore do not fight back.

Make no mistake: Like those coming out of Washington, these state-level attacks are about partisanship, restraining local choice, and removing any check on the power of those in the governing majority. They are antidemocratic assaults on an independent judiciary that, if allowed to continue, threaten to obliterate the independence of a key branch of government and

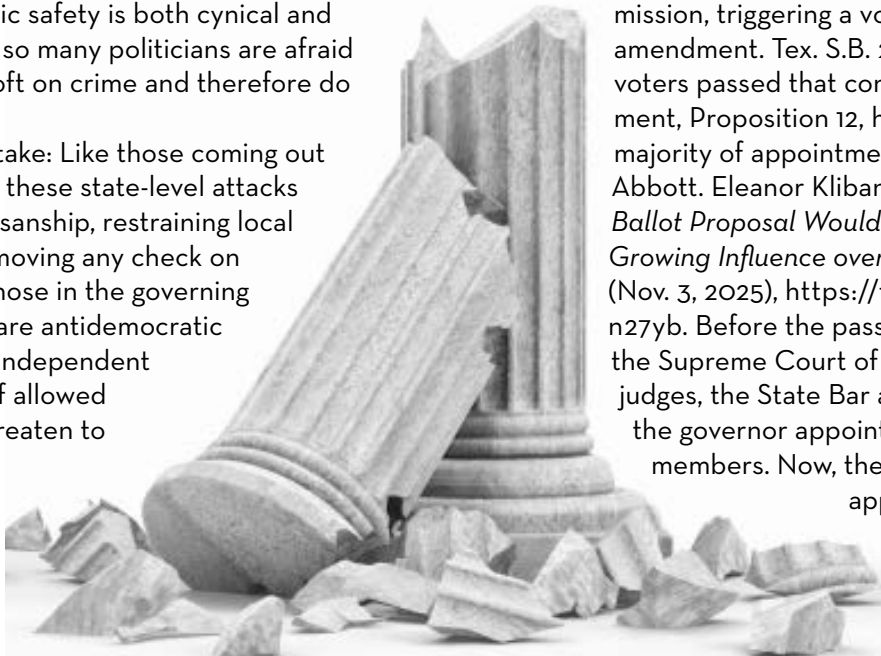
ensure that only those willing to adhere to the whims of the majority in power take these jobs. And once the judiciary is subservient to those in power, there will be no stopping voter suppression, the removal of other locally elected officials, and the illegal detention and deportation of human beings.

This article explores the increasing attacks on the judiciary, the implications of those attacks, and potential solutions for how people can oppose what is happening to the judiciary across the country. The biggest takeaway: America is at risk of losing one of its last checks on majoritarian power.

### Texas

Earlier this year, the Texas legislature passed SB 293, a bill that raised judicial pay for the first time since 2013. S.B. 293, 89th Leg. (Tex. 2025), <https://tinyurl.com/4uxbf56>; TPR Staff, Commentary, *Texas Legislature Approves Judicial Pay Raise and Lawmaker Pension Boost in Final Hours*, Tex. Pol'y Rsch. (June 3, 2025). Tucked into that bill is a provision expanding grounds for judicial removal. Specifically, that legislation allows for the suspension or removal of a judge if the State Commission on Judicial Conduct finds he or she "persistent[ly] and willful[ly] violat[ed]" the rule governing pretrial release decisions. Any citizen can file a complaint about a judge's decision, which then triggers an investigation into his or her conduct.

Legislators paired that bill with a Senate Joint Resolution that would give the governor considerable authority over the composition of that Commission, triggering a vote on a constitutional amendment. Tex. S.B. 293. This November, voters passed that constitutional amendment, Proposition 12, handing over the majority of appointments to Texas Governor Abbott. Eleanor Klibanoff, *Judicial Conduct Ballot Proposal Would Expand Abbott's Growing Influence over Courts*, Tex. Trib. (Nov. 3, 2025), <https://tinyurl.com/y2wn27yb>. Before the passage of Proposition 12, the Supreme Court of Texas appointed six judges, the State Bar appointed two, and the governor appointed five nonjudges as members. Now, the State Bar makes no appointments, and the governor appoints seven citizens, who will make up the majority of the



committee tasked with disciplining judges.

Supporters of both the legislation and the proposition couched these changes as important crime-prevention initiatives, claiming they were necessary to prevent rogue judges from releasing dangerous people pretrial. But, really, this campaign was part of an ongoing assault on the autonomy of Harris County, whose proponents for years have weaponized pretrial reform to win back power. Pretrial justice, in other words, became the wedge issue to attack Harris County officials who were Democrats.

In 2019, Harris County (Houston), the third most populous county in America and a Democratic-leaning place, embraced cash bail reform for misdemeanors as part of a settlement agreement in federal court. Critically, just a year before, a blue wave hit the courts, with Democrats running on progressive platforms securing all 85 elected judicial seats. Brandon Wolf, *Blue Wave Transforms Harris Courts*, *OutSmart Mag.* (Nov. 29, 2018), <https://tinyurl.com/2w23hy99>. Bail reform quickly became fodder for those trying to retake power and stem the blue gains in Houston, irrespective of the fact that no evidence showed the modest reforms caused a rise in crime. *Seventh Report Released in the Odonnell Consent Decree Monitorship*, Wilson Ctr. For Sci. & Just. at Duke Law (Mar. 5, 2024), <https://tinyurl.com/p7mrz7p>. No matter—right-of-center politicians, their supporters, and click-bait media fell into line and centered it. In 2020, for example, the local Fox Station started a segment called “Breaking Bond,” highlighting people who allegedly committed new offenses while on release. *Breaking Bond*, Fox26, <https://tinyurl.com/bp82f78t> (last visited Jan. 22, 2026). The news often focused on the presiding judges and magistrates who made release decisions. The show was and is fed by the local “crime stoppers,” fierce opponents of pretrial justice reform who regularly testify at the legislature and have close relationships with politicians, who use those stories as fuel for policy change. Crime Stoppers, <https://crime-stoppers.org/> (last visited Jan. 22, 2026). Likewise, in 2022, a well-funded (but failed) attempt to oust the chief county judge—perhaps the most powerful executive position in the county—focused on her support for bail reform. Jasper Scherer, *Analyzing Claims from Hildalgo, Mealer Campaign Ads in Harris County Judge Race*, *Hous. Chron.* (Oct. 28, 2022), <https://tinyurl.com/5xtmnp3>.

And then in 2024, pretrial justice became a predicate for the legislative attacks on judges. State

Senator and now Attorney General Candidate Joan Huffman, for example, wrote that “for far too long, rogue judges have evaded warranting discipline,” justifying her authorship of Proposition 12. Joan Huffman (@joanhuffman), X (Nov. 5, 2025, 9:03 AM), <https://tinyurl.com/mu2kv4zc>. The governor likewise made no bones about his goal with the change. “Activist judges have too much discretion to let repeat offenders out on bail, only to see them harm more Texans,” wrote his Press Secretary in support of the Proposition. Klibanoff, *supra* (quoting Andrew Mahaleris).

Given that it is empirically false to claim pretrial reform caused crime in Harris County, or anywhere, it is important to ask what other theme runs through all these attacks and legislation. Terry-Ann Craigie & Ames Grawert, *Bail Reform and Public Safety: Evidence from 33 Cities*, Brennan Ctr. for Just. (Aug. 15, 2024), <https://tinyurl.com/37fz2s3r>. The answer: taking back often unearned power. In a state that many pundits think could turn blue, Harris County, with over five million people, is key. Ryan J. Rusak, *Opinion, A Democratic Wave Has Formed. Can It Reach Texas New Year?*, *Fort Worth Star-Telegram* (Nov. 5, 2025), <https://tinyurl.com/sby4yhmu>. It is no coincidence that the legislature has repeatedly targeted Harris County’s attempts to improve access to voting while also passing a preemption law usurping Texas’s big cities’ ability to govern themselves. Andrew Schneider, *Elections Bills, Including Two Targeting Harris County, Set to Become Law*, *Hous. Pub. Media* (June 12, 2023), <https://tinyurl.com/578vk46t>; Natalia Contreras, *Harris County Must Remove Its Elections Chief Under New Legislation Headed to Gov. Greg Abbott*, *Tex. Trib.* (May 23, 2023), <https://tinyurl.com/mrs7yvky>; Joshua Fechter, *Judge Declares New Texas Law That Would Erode Cities’ Power to Enact Local Rules Unconstitutional*, *Tex. Trib.* (Aug. 30, 2023), <https://tinyurl.com/46yahbk4>. Judges, however, have been the backstop to slowing down or preventing these rank attacks on local control, and retaining control of the judiciary is therefore key. It is why, on the electoral side in 2024, the Judicial Fairness PAC spent \$18 million on judicial races, \$8 million of which went to oust Democrats from the bench in Harris County, and why Attorney General Ken Paxton spent big to successfully primary three Republican judges who ruled against him in a voter fraud prosecution, finding he had no jurisdiction to bring the case. Michelle Pitcher, *GOP Claws Back Dem Judicial Seats with Big Money and Big Red Wave*, *Tex. Observer* (Nov. 5, 2024), <https://>

[tinyurl.com/4um2xahm](https://tinyurl.com/4um2xahm); William Melhado, *Ken Paxton Successfully Ousts Three Republican Criminal Appeal Court Judges*, Tex. Trib. (Mar. 6, 2024), <https://tinyurl.com/3cf7bvrp>. Judges who might reign in power must go.

### Washington, D.C.

In September 2025, a Congressman from Texas introduced a bill to eliminate local control over the judicial nomination process in Washington, D.C.'s local courts. Press Release, Pete Sessions, Cong. (Tex.), HR 5125 Passes out of House (Sept. 17, 2025), <https://tinyurl.com/yc2vhfx4>. D.C. has a system, separate from the federal courts, that operates similarly to state courts. Currently, D.C.'s Judicial Nominating Commission (JNC) vets and proposes nominees to fill vacancies in D.C. Superior Court and on the D.C. Court of Appeals—the courts that largely oversee D.C.'s version of state crimes. The JNC provides D.C.—which does not elect a district attorney, unlike in most cities—some modicum of control over its legal system. Although the president appoints some members of the seven-member commission, so does the mayor, the D.C. Council, the chief judge of the U.S. District Court, and the D.C. bar. The president must then nominate those recommended by the JNC, and the Senate must confirm them, but, generally, the JNC's recommendations go through.

The congressman from Texas, whose constituents live nearly 1,400 miles from D.C., claimed that the bill would speed up the process of approving sitting judges in a strapped court system. He did not explain how the president would ensure judges were qualified without JNC vetting, nor did he explain how the busy Senate would expedite confirmations, the major reason for current judicial vacancies. Michael Schaffer, *The Ludicrous System That Makes It So Hard to Fight Crime in DC*, Politico (May 24, 2024), <https://tinyurl.com/3rnxsjv>. He tucked the bill into a package of 13 others that attack D.C.'s locally approved criminal justice policies. It passed out of the House in September. Sessions Press Release, *supra*.

The attack on D.C., including the one on the JNC, also is happening under the pretext of crime. Indeed, both the D.C. Superior and Appellate benches have been attacked for their rulings, with some complaining judges are too “pro-defendant”—code for following the law and dismissing evidence when police or prosecutors violate it. Stuart Nash, Opinion, *This D.C. Court's Rulings Are Making It Harder to Fight*

*Crime*, Wash. Post (Aug. 15, 2025), <https://tinyurl.com/2cnjfp7y>. That's the judges' job, yet it is clear there are a growing number of people who wish those judges would rule differently and think they can change the appointment rules to stop it.

As in Texas, this usurpation of local control, including over judges, reeks of grabbing unearned power in a majority-minority city. The U.S. Attorney's office, which handles both federal and local allegations of crime, has become increasingly political. Attacking judges is a way to prevent anyone from standing up to their worst misbehavior. Former acting U.S. Attorney Ed Martin was particularly open about his detest for D.C.'s judges. In his email to staff after the president withdrew his nomination for U.S. Attorney [Hailey Fuchs & Kyle Cheney, *Trump Says He's Pulling Ed Martin's Nomination*, Politico (May 8, 2025), <https://tinyurl.com/2z32x82n>], he promised to continue fighting against the “systemic abuse” from both public defenders and judges he thought halted the administration's goals. Ryan J. Reilly, *Trump's "Weaponization" Chief Accuses D.C. Disciplinary Counsel Investigating Him of Weaponization*, NBC News (May 14, 2025), <https://tinyurl.com/ybba6wym>. And before his forced shift in roles, he said he was “rewriting” rules requiring prosecutors to turn over evidence of police credibility problems to judges as a way to “stand up to judges” and “anyone who maligns our office.” Keith L. Alexander & Spencer S. Hsu, *U.S. Attorney in D.C. Considers Withholding Police Misconduct Information*, Wash. Post (Mar. 25, 2025), <https://tinyurl.com/3dx6jxes>. Martin is now the head of the DOJ's “weaponization of justice working group.”

### Louisiana

In 2024 in Louisiana, the conservative legislature rammed through four proposed constitutional amendments during a special session, including Amendment 1. Julie O'Donoghue & Greg LaRose, *Louisiana Voters Reject 4 Constitutional Amendments, Handing Landry Major Defeat*, La. Illuminator (Mar. 29, 2025), <https://tinyurl.com/5bb6588n>. Among other changes, Amendment 1 proposed major changes to the state's Judiciary Commission composition. Clare Roubion, *Legal Experts Raise Red Flags over Louisiana's Amendment 1*, La. Legal Ethics (Dec. 4, 2024), <https://tinyurl.com/mstsbtw>. That commission is an independent body tasked with investigating complaints against judges. The amendment added five political appointees to the nine-member commission, to be

appointed by the Speaker of the House, the governor, and the President of the Senate. All are members of the same party. It also permitted the Supreme Court—currently dominated by conservatives—to overrule the commission’s recommendations.

Tough-on-crime proponents promoted this law as a way to hold accountable judges they believed were “too lenient” in sentencing, but many argued it was about control. Greg LaRose, *Louisiana Voters Approve Four Constitutional Amendments*, La. Illuminator (Dec. 7, 2024), <https://tinyurl.com/n9tcwr7m>. As two former members of the Commission wrote: “By allowing political appointments to the judiciary commission, the legislative and executive branches attempt to influence and control the judiciary, thereby undermining its independence.” Ed Walters & Robin Giarrusso, Guest Column, *Proposed Amendment Risks Politicizing Discipline for Judges*, Times-Picayune (Nov. 22, 2024), <https://tinyurl.com/bddpdsf8>. Voters narrowly passed that amendment.

Perhaps buoyed by this momentum, legislators then pushed a constitutional amendment to permit “specialty courts,” regional entities established by lawmakers to hear certain classes of cases such as those involving juveniles. Jack Brook, *Louisiana Voters Reject Constitutional*

*Amendments Championed by Republican Governor*, AP (Mar. 31, 2025), <https://tinyurl.com/mutcb5d9>. That change would have effectively allowed the legislature to remove jurisdiction in juvenile cases from locally elected judges, like those in New Orleans, and send them to a system with appointed judges. Opponents of Amendment 1 described it as an attempt to “usurp judicial authority from local courts.”

Notably, this amendment was part of a package of four that included Amendment 3, which would have allowed the legislature to expand the number of felony crimes that could result in prosecutors

charging children as adults. *Louisiana Amendment 3, Legislative Authority to Determine Crimes for Trying Juveniles as Adults Amendment (March 2025)*, Ballotpedia (Mar. 2025), <https://tinyurl.com/y2t8b2vk>. The campaign included extensive fearmongering about juvenile crime in the state, which some believed would lead to all amendments passing, especially in an off-cycle election. Joni Hess, *Backers Say Louisiana’s Amendment 3 Will Curb Juvenile Crime. But Does It Go Too Far?*, NOLA.com (Mar. 24, 2025), <https://tinyurl.com/4jr6u3jj>.

All four constitutional amendments on the ballot



failed spectacularly last March in what many viewed as a rebuke to the legislature’s overreaching. Brook, *supra*.

But no one is resting on their laurels, and concerns remain over future statewide attacks on locally elected judges. Indeed, this May, the governor ordered the state’s supreme court to review judicial outcomes with an eye to the ratio between acquittals and trials. Travers Mackel, *WDSU Investigation Prompts Governor to Call on Supreme Court for Judge Investigation*, WDSU News (May 19, 2025), <https://tinyurl.com/4wbw59dt>. He has focused especially on Or-

leans Parish and one New Orleans judge in particular, a Black woman former criminal defense lawyer who has had 48 bench trials with 38 not guilty verdicts over three years. The governor stated: “There should be an automatic review of any judge that has a disproportionate number of acquittals, and we have seen in NOLA, judges with cases of clear evidence of guilt and end in acquittal should be scrutinized.” (His statement ignores that bench trials instead of jury trials often occur when there is a clear legal or evidentiary deficiency in the case. Richard A. Posner, *An Economic Approach to the Law of Evidence* (John M. Olin Program in Law and Economics Working Paper No. 66, 1999), <https://tinyurl.com/e4erj2nf>).

At this point, the pattern should be clear. We see yet another attempt to bring judges under the control of the reigning party. And, like the attacks on D.C. and Houston, legislators have focused on a majority-minority city using crime as a pretext to bolster power.

### And More

These attacks are metastasizing. In Maryland, a legislator is arguing for tougher measures to punish judges who give what he characterizes as a “light” sentence to an accused if he subsequently commits another crime. Tessa Bentulan, *Debate Grows in Maryland over Holding Judges Accountable for Repeat Offenders*, Balt. Sun (Sept. 19, 2025), <https://tinyurl.com/2wrne584>. In the wake of Decarlos Brown’s tragic murder of Iryna Zarutka on a Charlotte train, ten officials called for the removal of the magistrate who had previously released him pretrial on a misdemeanor charge of misusing 911. Amanda Clark, *Judge Who Released 114-Time Offender Faces Backlash*, MSN.com (Sept. 15, 2025), <https://tinyurl.com/yc392vjm>. In Louisville, a new group, “Louisville Judges Watch,” formed to elect judges who explicitly promise to be tough on crime, rather than to follow the law or to be judicious and consider the individual circumstances of each case. Adie Schanie, *New Political Group in Louisville Forms to Help Elect Tough-on-Crim Judges*, WDRB (Sept. 3, 2025), <https://tinyurl.com/4zjbsv4s>. In 2023, the Mississippi legislature passed a law ending the local elections of judges in majority-Black Jackson, and only in Jackson. Michael Milov-Cordoba et al., *Legislative Assaults on State Courts in 2023*, Brennan Ctr. for Just. (Jan 9, 2024), <https://tinyurl.com/mv6du364>. (The Mississippi Supreme Court eventually struck down that part of the law, although it retained the portion that created

a new court system with an unelected judge in one section of the city. Rachel Selzer, *Mississippi Supreme Court Strikes Down Part of Anti-Democratic Law Targeting Jackson*, Democracy Docket (Sept. 22, 2023), <https://tinyurl.com/mwxpkfck>.) And at the federal level, Congressman Randy Fine has introduced a bill allowing for civil suits against judges who release “repeat offenders.” Elaine Mallon, *Rep. Fine Proposes Bill to Allow Lawsuits Against Judges Releasing Violent Offenders*, KFOX14 (Sept. 9, 2025), <https://tinyurl.com/bdhvkvvc>.

And, of course, there are the relentless attacks on social media by those with huge platforms. Elon Musk regularly posts on X about “woke judges.” He recently wrote: “It is incredibly cruel of so many judges to push murderous thugs on the innocent public!” as if this were something that happened regularly or even anywhere. TOI World Desk, *“Incredibly Cruel”: Elon Musk Slams Judges for “Pushing Thugs on Public”: Sparks Debate over Repeat Offender Release*, Times of India (Nov. 24, 2025), <https://tinyurl.com/2s355vnb>. A brief search for “woke judges” on X shows just how far this talking point has spread among right-wing influencers seeking to place blame for crime, both perceived and real.

### The Implications

These attacks on the judiciary have serious repercussions. First, there is the obvious risk to judges’ physical safety. In March of this year, U.S. Marshals warned federal judges of increasingly high levels of threats after both President Trump and Musk started calling for their impeachment. Peter Eisler et al., *Exclusive: Judges Face Rise in Threats as Musk Blasts Them over Rulings*, Reuters (Mar. 5, 2025), <https://tinyurl.com/4ykszmsn>. As the chief justice documented in his report on the federal judiciary, some judges have worn bulletproof vests to public appearances. Press Release, N.Y.C. Bar, Deputy Attorney General’s “War” on the Judiciary Is an Assault on Judicial Independence (Nov. 17, 2025), <https://tinyurl.com/vrsmukn9> [citing C.J. John Roberts, *2024 Year End Report on the Federal Judiciary* at 5].

Second, these attacks will undoubtedly lead to fewer people wanting these important jobs—or at least fewer people who believe in the rule of law and in fairness. Candidates for the judiciary have other options. Most obviously, they can continue practicing law. They also can take on corporate jobs, work at universities, and do countless things that will not

lead to someone swatting their homes or doxxing their families online. Why take the job that they know might lead them to be the subject of harassment from legislators or anonymous accounts on social media? The end result, if these attacks continue without pushback, will be a less diverse judiciary.

These threats also will chill judicial decision-making. Judges will second-guess releasing people who should be released pretrial, ruling in a defendant's favor, and giving anything below a maximum sentence, even when that is what the law requires. The risk of a more carceral judiciary is not new—it is one of the most salient complaints critics have lodged against an elected judiciary. Numerous studies have shown that proximity to an election season leads to a more punitive judiciary. Kate Berry, *How Judicial Elections Impact Criminal Cases*, Brennan Ctr. for Just.: Twenty Years (2015), <https://tinyurl.com/4pyhvb2b>. But the threat of having the wealthiest man on Earth tweet about a single judicial decision or blaming is different in kind—as is the threat of career-ending repercussions like removals, impeachments, and censures. Even if a judge is consciously committed to fairness and equity, subconsciously, the possibility of these attacks will loom large. It is hard not to imagine how the accused does not lose in that situation every time.

Nor will the influence be limited to judicial decisions in the criminal legal system. While many of these attacks are conducted under the pretext of criminal justice, they are about consolidating power, and some, like those coming out of Washington, are explicitly about that. Judges will be less likely to rule against the majority party and to stop unconstitutional legislation because they don't want to draw the ire of those in other branches. More and more judges will simply serve as rubber stamps for the ruling majority.

That will be the end of judicial independence.

### Resisting the Attacks on the Judiciary

All is not lost. There are several ways to fight back against these increasing and dangerous assaults on an independent judiciary. At the outset, elected officials committed to the rule of law, separation of powers, and equity must push back against bills, impeachments, and the attacks on the judiciary launched both globally and in response to a judge's specific rulings.

This response may seem obvious, but in the analogous case of attacks on prosecutorial independence, it hasn't happened much. Over the last several years, elected officials at the state level have tried to

remove or impeach from office democratically elected local prosecutors in big cities, claiming that they are not tough enough on crime. These officials have no evidence to support their specious claims that progressive prosecutors are making communities more dangerous—indeed, all research shows the opposite—but that does not stop their political rhetoric and power-grabbing behavior. Lauren-Brooke Eisen et al., *Myths and Realities: Prosecutors and Criminal Justice Reform*, Brennan Ctr. for Just. (Oct. 23, 2024), <https://tinyurl.com/ztev9mtx>. Governor Ron DeSantis based his removal of Monique Worrell, the Black female State's Attorney in Orlando, on since-discredited data about dismissed cases (Krys Fluker, Editorial, *Stop the Sickening Shenanigans in 9th Circuit State Attorney Handoff*, Orlando Sentinel (Dec. 16, 2024), <https://tinyurl.com/fvh8xcxu>), provided to him by a sheriff who has now been arrested for racketeering and conspiracy to commit racketeering. Madilyn Destefano, *Timeline: Case Against Suspended Osceola County Sheriff Marcos Lopez Involving Illegal Gambling Ring*, WESH2 News (Jan. 12, 2026), <https://tinyurl.com/3wv253xn>.

But many legislators remain silent, deciding to stay out of the fray. Chris Brennan (@ByChrisBrennan), X (Nov. 16, 2022), <https://tinyurl.com/3b9js6p3>. Perhaps this reaction shouldn't come as a complete shock because, for decades, most politicians have struggled with what to say about crime, fearing that they will look weak and disrespect victims if they oppose increasingly carceral measures. Instead, they simply parrot back pro-carceral talking points, providing no alternative vision for safety and fairness.

And perhaps acting out of the same paralysis, many elected officials have allowed or stood idly by during these power grabs occurring largely in blue cities with majority-minority districts. They have done so with reform prosecutors and, most recently, with the numerous crime bills the House passed overruling local D.C. law. Olivia George & Meagan Flynn, *Taking Trump's Lead, House Votes to Change D.C. Bail, Policing Laws*, Wash. Post (Nov. 19, 2025), <https://tinyurl.com/5afd6yec>.

And now, this trajectory risks expanding to the bench. This natural endpoint may be the riskiest of all because it involves the evisceration of one of three independent branches of government.

Politicians who care about an independent judiciary must walk and chew gum at the same time. They must stand up for democracy and the rule of law while

also articulating a vision of safety (preferably one that builds up communities rather than pushes for ineffective and inhumane prison-first policies that don't improve safety, but that is for another day). If they don't speak up against these attacks, and quickly, they will preside over the hollowing out of an independent judiciary. They do so at their peril: They may one day find themselves at a defendant's desk with an unethical prosecutor and a biased judge.

Nor should pushback occur on partisan lines, although that may be impossible in an ever-polarized world. Separation of powers is enshrined in nearly every state constitution. *Separation of Powers: An Overview*, Nat'l Conf. of State Legislatures (May 22, 2025), <https://tinyurl.com/2wp5cuxr>. It should be obvious: If it goes away, there is no check on an abuse of power.

The second group with the power to push back on these attacks is the media. The media have a few choices when they report on the judicial attacks. They can describe them as a fight over pretrial release decisions or safety, or they can zoom out and examine what is actually happening in many of these cases, with bad-faith actors trying to take over local control. Context is everything, and the attacks on the judiciary are not occurring in a vacuum. They are happening at the same time as elected officials try to control prosecutor offices, local school systems, and local election procedures. They are part and parcel of a growing attempt to disempower and disenfranchise those who think differently and want to govern differently.

It is also imperative that the media fact-check those who are attacking the judiciary. Just because an elected official says that a judge is responsible for allowing dangerous people out onto the streets does not make it so. Often, the government has not proven that a person is a danger to the community when that decision is made. Sometimes, the police have not collected enough evidence to make even a minimal case. Sometimes, release is what the law requires. It is dangerous to allow false allegations to appear in news stories. People believe and repeat them.

The judiciary also could take proactive steps to shield its integrity from political pressure. Right now, judges operate under remarkably few rules governing who can contribute to judicial campaigns. Gary DePalo, *Public Financing of Judicial Elections: An Ethical Analysis*, 32 Geo. J. Legal Ethics 483 (2019), <https://tinyurl.com/3fef4fbe>. Compounding this vulnerability, the absence of comprehensive manda-

tory recusal guidelines leaves the judicial system exposed to undue political influence. That will only get worse as people focus increasingly on attacking judges for their decisions. Mandatory recusal rules could help decrease that threat.

Moreover, strategic litigation is an essential tool in protecting the judiciary. There may not be much lawyers can do about those on X making false claims about judges, but they are not powerless against state and federal officials trying to usurp the power of the judiciary. At least right now, separation of powers is a doctrine that exists in the federal and in most state court constitutions. Legislative and executive interference into judicial decision-making and retention must be challenged.

Lawyers are expensive, and judges are not rich. With major law firms engaging in less and less pro bono work, we need philanthropy to consider support for the defense of the judiciary and those firms still standing up to authoritarianism to make these cases a priority. David L. Brown, *Pro Bono Hours Dropped at US Firms Last Year*, Best Law Firms (Nov. 6, 2025), <https://tinyurl.com/4n75b6yj>. Lawyers at universities also should take on these cases; their textbooks teaching the separation of powers may soon be of no use.

## Conclusion

We stand at a moment where nearly every fundamental right is under attack. But amid the chaos, it is essential that we focus on the attacks on the judiciary both inside and outside of Washington. Protecting an independent judiciary is essential to the preservation of democracy and to the protection of so many of the causes people are fighting for. And it is especially important that we focus on what is happening at the state level, where legislatures often serve as breeding grounds for the most outrageous assaults on fundamental principles of American law and constitutionalism, and where legislatures are honing in on destroying the separation of powers and the independence of the courts.

Without an independent judiciary, the legislative and executive branches, and any overreach they engage in, go unchecked. There will be no stopping political prosecutions. There will be no protection against voter suppression, illegal political removals, or outrageous sentences. The ruling party, whatever party, will effectively control the judiciary and therefore whatever they say will go. That's not a democracy, and it's not a