

## Trump Judicial Nominee Bill Mercer Is Spearheading The Effort To Turn Montana's Nonpartisan Supreme Court Into A Partisan Right-Wing Rubber Stamp

### SUMMARY:

The Montana Supreme Court is composed of nonpartisan, elected judges. In recent years, the court has struck down some GOP-backed bills, including laws limiting voting and abortion access.

Now, state Republicans are waging a partisan attack on the independence of the judiciary. This year, Republicans introduced [27 pieces of legislation](#) aimed at reshaping the judiciary. Trump's [nominee](#) to the District of Montana, Bill Mercer, voted in favor of 14 out of 19 of those bills that reached the House.

Senate Bill 42 and House Bill 838 would make judicial elections partisan, and both died in the legislature. House Bill 39 repeals a state law banning political parties from contributing to judicial campaigns and was signed into law. Senate Bill 40 would require judicial deliberations to be recorded and printed for public records. Republican Governor Greg Gianforte [vetoed](#) the bill because internal communications between government officials are protected privileged information. Senate Bill 45 created a judicial performance evaluation system intended for voters. Senate Bill 48 makes it easier for citizens to discuss complaints against judges sooner. Mercer voted for all of the bills.

In 2023, Mercer [sponsored](#) a bill to take away Montana voters' right to elect their state supreme court justices, despite 91% of Montanans opposing such an amendment.

The bills ladder up to a goal of politicizing the courts, retaliating in the face of court losses, and removing authority from voters and bestowing it upon the executive. Mercer's efforts mirror those of the Trump administration, which has led the way nationally in [attacking the independence and impartiality of federal courts](#).

## The Montana Supreme Court Is Comprised Of Nonpartisan, Elected Judges Which Frequently Upholds Abortion And Voting Rights In The State

### The Montana Supreme Court Is A Nonpartisan, Elected Body

**Montana Supreme Court Justices Are Elected In Nonpartisan Elections.** "The Montana Supreme Court has made headlines in recent years with its decisions affecting reproductive rights, climate change, and election law, and will hear more high-profile cases in the coming years. Nonpartisan elections for two seats on the seven-member court this fall will shape the outcomes in those cases and the direction of law in Montana." [State Court Report, [10/24/24](#)]

### The Court Has Upheld Abortion Access And Voting Rights In The State

*The Montana Supreme Court Struck Down Several Anti-Abortion Laws*

**2025: The Montana Supreme Court Upheld A Lower Court Ruling That Struck Down Several Anti-Abortion Laws.** "Montana's Supreme Court upheld a lower court ruling that struck down as unconstitutional several laws restricting abortion access, including a ban beyond 20 weeks of gestation. The

measures approved by Republican lawmakers in 2021 had been blocked since a judge issued a preliminary injunction against them that year. While the case was pending, voters passed an initiative that enshrined the right to abortions in the Montana Constitution.” [Associated Press, [6/10/25](#)]

- **2021: Governor Greg Gianforte Signed Three Bills Restricting Abortion Access, Including Banning Abortion After 20 Weeks, Instituting Mandatory Ultrasounds, And Placing Restrictions On Abortion Pills.** “Montana Gov. Greg Gianforte signed three bills Monday restricting abortion access in the state, celebrating it as a success after several attempts to pass similar measures in previous year were vetoed by former Democratic governors. The bills ban abortion after 20 weeks of gestation, require health care providers to give pregnant women the opportunity to view an ultrasound before performing an abortion, and place several restrictions on abortion pills, including requiring that they be administered in-person rather than through telehealth.” [Associated Press, [4/26/21](#)]
- **2024: Montana Voters Approved A Ballot Measure Enshrining Abortion Rights In The State Constitution.** “Montana voters approved a ballot measure enshrining abortion in the state constitution, NBC News projects, delivering a victory to advocates for reproductive rights in a Western red state. The amendment will not change current law on abortion in Montana: Abortion is legal in the state until fetal viability, around the 23rd or 24th week of pregnancy, backed up by a 1999 ruling by the state Supreme Court.” [NBC News, [11/6/24](#)]

**2023: The Montana Supreme Court upheld A Lower Court Ruling That Allowed Advanced Practice Registered Nurses To Legally Provide Abortions.** “The Montana Supreme Court has upheld a lower court’s decision that allowed advanced practice registered nurses to legally provide abortions in the state. On Friday, the state’s high court issued its ruling in Weems v. State, negating the state’s argument that the Legislature had the ability to regulate a nurse’s scope of practice that is currently overseen by a professional medical board.” [Montana Free Press, [5/12/23](#)]

*2024: The Montana Supreme Court Struck Down Anti-Voting Laws*

**The Montana Supreme Court Ruled In Favor Of A Collection Of Native American Organizations, Holding That Two State Laws Unconstitutionally Violated The Right To Vote Under The State Constitution.** “The Montana Supreme Court today ruled in favor of a collection of Native American organizations and tribes, holding that two state laws that hinder Native American participation in the state’s electoral process violate the fundamental right to vote under the Montana Constitution.” [ACLU, [3/27/24](#)]

- **The Bills Would Have Ended Election Day Registration And Prohibited Paid Third-Party Ballot Assistance, Both Of Which Would Have Harmed Native American Voters Living On Reservations.** “One measure, HB 176, would have ended Election Day registration; the other, HB 530, aimed to prohibit paid third-party ballot assistance. Native American voters living on reservations disproportionately rely upon both Election Day registration and ballot assistance to cast votes in Montana.” [ACLU, [3/27/24](#)]

*2024: The Montana Supreme Court Upheld A Historic Youth Climate Case Ruling*

**2024: The Montana Supreme Court Upheld A District Court Ruling In The Nation’s First Constitutional Climate Change Trial, Which Affirmed That Youth Plaintiffs Have A “Fundamental Constitutional Rights To A Clean And Healthful Environment.”** “The Montana Supreme Court on Wednesday upheld a district court ruling in the nation’s first constitutional climate change trial, affirming that the youth plaintiffs have a ‘fundamental constitutional right to a clean and healthful environment’ while revoking two Montana statutes.” [Daily Montanan, [12/18/24](#)]

## Bill Mercer And Montana Republicans Have Led A Partisan Attack On The State Supreme Court

### Republicans Have Criticized The Court, Claiming A Liberal Bias Is The Cause For Blocking Some GOP-Backed Bills

**Montana's Nonpartisan State Supreme Court Has Come Under "Intense Partisan Scrutiny" As Republicans Decry Repeated Rulings Block GOP-Backed Laws.** "Montana's nominally nonpartisan state Supreme Court has come under intense partisan scrutiny in recent years, as Republicans argue the court's repeated rulings blocking GOP-backed laws on constitutional grounds are evidence of liberal bias. The rulings that have infuriated some members of the GOP include nullifying a law that would have ended Election Day voter registration and upholding the Armstrong precedent that interprets the state Constitution's right of privacy as protective of abortion access." [Montana Free Press, [5/12/23](#)]

**Republicans Have Criticized Aspects Of The Court's Administrative Practices And Set Up Select Committees To Prove The Court's Internal Conduct.** "Legislative Republicans have also criticized aspects of the court's administrative practices and set up select committees to probe the court's internal conduct." [Montana Free Press, [5/12/23](#)]

**2024: Democrats Refused To Participate In A Judicial Oversight Committee, Calling It An Unnecessary Attack On The Judicial Branch.** "Montana's Senate president on Friday announced the appointment of three House Republicans and five Senate Democrats to the Republicans' newly created select committee on judicial oversight and invited House Democrats to join, but the Democrats said it's still highly unlikely they participate, calling the committee an attack on the judicial branch and saying it is unnecessary." [Daily Montanan, [4/12/24](#)]

### 2025: Montana Republicans Aimed To Overhaul The Judiciary, Introducing 27 Pieces Of Legislation

**January 2025: The Montana Senate President Said Lawmakers Had An Obligation To Check The Power Of The Judicial System, Calling Judicial Reform "Top Of Mind" For The Republican Majority.** "Montana Senate President Matt Regier, R-Kalispell, doesn't believe the tension between the courts and the state legislature should be characterized as a war between two coequal branches of government; however, he does believe that lawmakers have an obligation to check the power of the judicial system during the upcoming legislative session. Speaking at a press conference with Speaker of the House Brandon Ler and two additional members of the Republican leadership, Regier said that when the 69th Legislature convenes next week, 'top of mind here for the Republican Majority is judicial reform.'" [Daily Montanan, [1/3/25](#)]

**2025: Montana Republicans Teed Up 27 Pieces Of Legislation Intended To Overhaul The Judicial Branch.** "Frustrated by several unfavorable court rulings in recent years striking down laws they championed, Montana Republican legislators have teed up a bucket of judicial reform bills this session to reshape the courts to their liking. Tuesday, the Senate Judiciary Committee heard some of the 27 pieces of legislation intended to overhaul the judicial branch, while House Republicans gave the initial OK to the first of their judicial bills along mostly party lines, 57-43." [Montana Free Press, [1/14/25](#)]

**Of The 19 Bills Voted On In The House, Mercer Voted For 14 Of Them.**

| Bill Number           | Short Title                                   | Mercer Vote | Status          |
|-----------------------|---|-------------|-----------------|
| <a href="#">HB 30</a> | Requiring the Supreme Court to apply a burden | No          | Died in process |

|                       |  |     |                            |
|-----------------------|--|-----|----------------------------|
|                       | of proof for challenge to constitutionality of legislative act                         |     |                            |
| <a href="#">HB 35</a> | Allocating judicial standards commission to the department of justice                  | Yes | Died in process            |
| <a href="#">HB 36</a> | Disallowing judge to serve as chair of judicial standards commission                   | Yes | Died in process            |
| <a href="#">HB 39</a> | Repeal law disallowing parties from contributing to judicial candidates                | Yes | Signed into law            |
| <a href="#">HB 52</a> | Generally revising administrative procedure laws relating to agency deference          | No  | Died in House process      |
| <a href="#">HB 65</a> | Audit State Bar of Montana   | Yes | Tabled in Senate committee |
| <a href="#">SB 13</a> | Remove Supreme Court original jurisdiction for ballot review                           | No  | Died in Senate process     |
| <a href="#">SB 14</a> | Audit Office of Disciplinary Council   | No  | Died in Senate process     |
| <a href="#">SB 15</a> | Revising grounds for impeachment   | Yes | Died in Senate process     |
| <a href="#">SB 16</a> | Allowing legislative committees to find contempt for violation of legislative subpoena | N/A | Died in Senate process     |
| <a href="#">SB 20</a> | Prohibit retired judges from hearing constitutional cases                              | N/A | Died in Standing committee |
| <a href="#">SB 21</a> | Allowing legislative and executive leadership to vacate a writ of mandamus             | No  | Died in Senate process     |
| <a href="#">SB 30</a> | Revise laws related to Judiciary and rule of necessity                                 | Yes | Signed into law            |
| <a href="#">SB 31</a> | IOLTA Bill providing Interest back to client   | N/A | Died in Senate process     |

|                       |   |     |                                     |
|-----------------------|---|-----|-------------------------------------|
| <a href="#">SB 38</a> | Generally revise laws relating to attorney fees and prevailing parties for veto overrides                               | Yes | Signed into law                     |
| <a href="#">SB 39</a> | Generally revise attorney fee awards  | Yes | Signed into law                     |
| <a href="#">SB 40</a> | Revise supreme court public records laws by opening deliberations and files to the public                               | Yes | Veto override failed in legislature |
| <a href="#">SB 41</a> | Requiring substitution of district court judges by random selection   | Yes | Signed into law                     |
| <a href="#">SB 42</a> | Provide for the partisan election of judges and justices  | Yes | Died in Senate process              |
| <a href="#">SB 43</a> | Generally revise injunctive powers of the judiciary   | N/A | Died in Senate process              |
| <a href="#">SB 44</a> | Generally revise laws regarding the separation of powers doctrine   | N/A | Died in Senate process              |
| <a href="#">SB 45</a> | Create a judicial performance evaluation commission and system  | Yes | Signed into law                     |
| <a href="#">SB 47</a> | Enhance committee review of statewide ballot issues   | N/A | Died in Senate process              |
| <a href="#">SB 48</a> | Generally revise laws relating to Judicial Standards Commission complaints  | Yes | Signed into law                     |
| <a href="#">SB 49</a> | Exempt lawyers serving in certain public offices from professional disciplinary measure and proceedings while in office | Yes | Died In Senate process              |
| <a href="#">SB 52</a> | Create Montana Court of Chancery  | N/A | Died in Senate process              |
| <a href="#">SB 66</a> | Generally revise definitions relating to the judiciary  | N/A | Died in Senate process              |

## **2025: Mercer Voted For A Series Of GOP-Backed Bills Politicizing The Judiciary**

### *2025: Mercer Voted For Bills Making Judicial Elections Partisan Elections*

**Senate Bill 42 Would Make Judicial Elections Partisan.** “One of the big efforts from Republicans in this legislative session is judicial reform. On Wednesday, the Montana Senate debated Senate Bill 42 which would fundamentally change judicial elections in the state by making them partisan.” [KTVH, [2/26/25](#)]

- **Mercer Voted For The Bill.** [Montana Legislative Services, SB 42, [4/1/25](#)]
- **SB 42 Died In Process.** “Last week two similar bills — Senate Bill 42 and Senate Bill 543 stalled in the House and Senate respectively.” [Daily Montanan, [4/7/25](#)]

**House Bill 838 Would Make Judicial Elections Partisan.** [Montana Legislative Services, HB 838, accessed [7/24/25](#)]

- **Mercer Voted For The Bill.** [Montana Legislative Services, HB 838, [4/7/25](#)]
- **May 20, 2025: The Bill Died In Process In The Montana House.** Montana Legislative Services, HB 838, [5/20/25](#)

### *2025: Mercer Voted For HB 39, Repealing A Ban On Political Parties Contributing To Judicial Campaigns*

**House Bill 39 Repeals A State Law Banning Political Parties From Contributing To Judicial Campaigns And Was Signed Into Law By Gianforte.** “Bills becoming law from the GOP effort to reshape the courts include House Bill 39, by Rep. Tom Millett, R-Marion, which repeals a state law banning political parties from contributing to judicial campaigns. House Bill 39 was signed by Gianforte in March.” [Montana Free Press, [5/19/25](#)]

- **Mercer Voted For The Bill.** [Montana Legislative Services, HB 39, [1/15/25](#)]
- **March 4, 2025: The Bill Was Signed Into Law.** [Montana Legislative Services, HB 39, [1/15/25](#)]

### *2025: Mercer Voted For SB 40 Requiring Public Disclosure Of Judicial Deliberations, Which Governor Gianforte Vetoed*

**Republican Governor Greg Gianforte Vetoed Senate Bill 40, Which Would Have Required Recorded And Printed Public Records Of Judicial Deliberations.** “A Republican effort to make sweeping changes to Montana courts has suffered another blow, this time with a veto by Gov. Greg Gianforte. Senate Bill 40, which would have required recorded and printed public records of judicial deliberations, was vetoed for being unconstitutional, Gianforte said in a letter to House and Senate leaders May 16.” [Montana Free Press, [5/19/25](#)]

- **Mercer Voted For The Bill.** [Montana Legislative Services, SB 40, [4/30/25](#)]

**Gianforte Said That Internal Communications Between Government Officials Were Considered Privileged Information.** “Throughout our nation’s history, internal communications between government officials have been considered privileged information. Under the U.S. Constitution, members of Congress can



discuss and deliberate official actions with their staff in confidence. The president can discuss and deliberate official actions with agency employees under his direction and control. And Supreme Court justices can discuss and deliberate with each other as they issue official decisions,' Gianforte wrote. 'The same is true of Montana's Constitution.'" [Montana Free Press, [5/19/25](#)]

**Gianforte Acknowledged Republicans' Frustration With "Judicial Activism" From The State Supreme Court.** "The Republican governor acknowledged the frustrations of GOP lawmakers who have seen several of their priority bills passed in recent legislative sessions ruled unconstitutional by the Montana Supreme Court following legal challenges. Gianforte alleged that "judicial activism" threatened constitutional order by infringing on lawmakers' policymaking authority and his ability to execute the law. But making deliberations public would 'chill candor among justices,' Gianforte wrote, and 'weaponize those discussions in future litigation.'" [Montana Free Press, [5/19/25](#)]

### *2025: Mercer Voted For SB 45 Which Creates A Judicial Performance Evaluation System*

**Senate Bill 45 Creates A Judicial Performance Evaluation System And Was Signed Into Law.** "Senate Bill 45, by McGillvray, will create a judicial performance evaluation system the public can access to learn about how judges are reviewed. The intent of lawmakers was to have the information available to the public when judges are on the ballot. The bill was signed by the governor May 13." [Montana Free Press, [5/19/25](#)]

**The Bill Creates An Independent Office On Judicial Performance Evaluation With 11 Members Selected By Legislative Majority And Minority Leaders, The Governor, And The Chief Justice Of The Supreme Court, Which Would Result In A Balance Favorable To Republicans.** "WHEREAS, the Montana Legislature has decided to establish an independent office on judicial performance evaluation with authority to implement an evaluation process and conduct and publicize evaluations. [...] (1) There is a judicial performance evaluation commission. The commission consists of 11 members as follows: (a) one member appointed by the president of the senate and one member appointed by the senate minority leader; (b) one member appointed by the speaker of the house of representatives and one member appointed by the house minority leader; (c) four members appointed by the governor, including only one member currently or formerly licensed to practice law in Montana; and (d) three members appointed by the chief justice of the supreme court, including only one member currently or formerly licensed to practice law in Montana." [Montana Legislative Services, SB 45, accessed [7/24/25](#)]

**The Office Would Conduct A Judicial Performance Survey Evaluating Issues Like Legal Ability And Attentiveness To Factual And Legal Issues.** "Judicial performance survey. (1) A third party under contract with the commission shall conduct a judicial performance survey. The third party may not be affiliated with a legal firm or a legal professional. Surveys must include questions inquiring into the judge's: legal ability, including the following: understanding of the substantive law and rules of procedure and evidence; attentiveness to factual and legal issues; [...]" [Montana Legislative Services, SB 45, accessed [7/24/25](#)]

- **Mercer Voted For The Bill.** [Montana Legislative Services, SB 45, [4/28/25](#)]
- **May 13, 2025: The Bill Was Signed Into Law.** [Montana Legislative Services, SB 45, [4/28/25](#)]

### *2025: Mercer Voted For SB 48 Which Allowed Citizens To Discuss Complaints Against Judges Sooner*

**Senate Bill 48 Removed A Ban On Citizens Discussing Complaints Against Judges Before The Matter Is Settled By Judicial Standards Commission And Was Signed Into Law.** "Senate Bill 48, by Sen. Carl Glimm, R-Kila, removes a ban on citizens discussing complaints against judges before matter is settled by the Judicial Standards Commission. Gianforte signed the bill May 8." [Montana Free Press, [5/19/25](#)]

- **Mercer Voted For The Bill.** [Montana Legislative Services, SB 48, [4/11/25](#)]

## **2023: Mercer Sponsored A Bill To Take Away Voters' Right To Elect State Supreme Court Justices And Bestow It On The Executive Branch**

### **Mercer Sponsored A Bill To Take Away Voters' Right To Elect State Supreme Court Justices And Bestow It On The Executive Branch, Despite 91% Of Montanans Opposing Such An Amendment.**

'Constitutional amendment to change process to select supreme court justices', from Rep. Bill Mercer (R-Billings), would take away Montana voters' right to elect their state supreme court justices, and instead, bestow that power to the Executive branch. Mercer has promised this amendment will make it to a hearing. Despite the fact that a stunning 91% of Montanans would oppose such an amendment, according to recent polling by research firm Middle Fork Strategies." [Montana Democrats Press Release, [3/20/23](#)]

- **April 4, 2023: The Bill Passed The Montana State House, 59-39.** [Montana Legislative Services, HB 915, [4/4/23](#)]
- **May 5, 2023: The Bill Died In Process In The Montana Senate.** [Montana Legislative Services, HB 915, [5/5/23](#)]

## **2025: The Trump Administration Has Directed Hostility To The Courts**

**The Trump Administration Has Had Conflict With The Courts, Calling For Judges Who Rule Against The Administration To Be Removed And Dismissing The Authority Of Courts.** "The Trump administration has had a fraught relationship with the courts in its first one hundred days. Administration officials like Vice President JD Vance and Elon Musk have called for judges who rule against the administration to be removed from office. Other members of the administration have refused to rule out defying court orders and dismissed the authority of district courts." [Protect Democracy, [5/8/25](#)]

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