



North Carolina's Attacks on the Courts Lead to Fewer Judges of Color

By Billy Corriher, Michele Jawando, and Lukasz Grabowski

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State and federal courts are incrementally cracking down on the North Carolina General Assembly's voter suppression efforts. Federal courts have ruled that legislators intentionally reduced African American voters' access to the ballot when they crafted the state's wide-ranging 2013 voting bill and when they redrew legislative election districts in 2011.¹ The North Carolina Supreme Court could soon rule in several cases that could affect voting rights.²

GOP politicians have harshly criticized these court rulings and have responded by proposing drastic changes to the court system that could get their preferred judges on the bench.³ Legislators have passed bills that limit Gov. Roy Cooper's (D) authority to appoint judges.⁴ They shrank the size of the North Carolina Court of Appeals to prevent appointments by the governor,⁵ and they recently canceled the 2016 judicial primary elections.⁶ In a series of laws in recent years, legislators have made North Carolina's judicial elections partisan.⁷ Legislators have waged war on the judicial branch.⁸

The state's African American judges have found themselves caught in the crossfire of these political battles. People of color are already severely underrepresented in North Carolina state courts,⁹ and recent changes could be making the problem worse.¹⁰ Bills pending in the legislature could deepen the disparity and further entrench a conservative, white elite in the state's judiciary. At a moment of deep divisions and doubts about American democracy,¹¹ political decisions that could eliminate the few judges of color would only heighten the mistrust among communities of color with respect to the justice system and the political process.¹²

Concerns that the legislature's changes to the judiciary could lead to fewer judges of color has not slowed down their efforts to increase their power over the courts. The General Assembly will soon consider a judicial redistricting bill that gerrymander judges and prosecutors, as well as a constitutional amendment that gives legislators the sole power to choose judges.¹³

The proposal for judicial redistricting would likely lead to less diversity on the bench. The bill passed by the state House of Representatives would put judges of color in districts with other incumbents, making it more difficult for these judges to keep their seats.¹⁴ Judge J. Calvin Hill, for example, is the only black judge in Buncombe County, which includes the mountain city of Asheville, and an early version of the bill placed him in a district with another incumbent.¹⁵ “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,” Judge Hill said.¹⁶ He said the new district “disenfranchises the large part of the African-Americans who would be a voting bloc for me.”¹⁷ Judge Hill moved to Asheville to become a public defender in 1995, after the local legal community sought a black lawyer for the position.¹⁸ Judge Hill has talked about alternative sentencing when campaigning,¹⁹ and he recently expressed concern about a for-profit company hired by the court to process low-level misdemeanors and whether defendants could afford its fees.²⁰

In addition to gerrymandering, legislators also plan to move forward with their ultimate power grab: a constitutional amendment taking away the voters’ power to choose judges and giving it to the legislature. The greatest threat to judicial diversity may be handing over the reins of the judiciary to a legislature that has suppressed black voters.

In recent years, North Carolina has become the epicenter of the fight against voter suppression. The courts have protected voters’ rights, and judges of color have played a key role.²¹ Proposals that would eliminate the voices of judges of color cannot be interpreted as mere coincidence but rather as part of a broader effort to eliminate the political power of people of color in North Carolina.

Overturing the voters’ choice in 2016

A conservative North Carolina Supreme Court justice was up for re-election in 2016, and control of the court was also up for grabs.²² But in 2015, the legislature passed a bill to change state Supreme Court elections from open races to retention elections, in which voters only decide whether an incumbent should remain in office.²³ Even if voters had rejected the conservative incumbent and the Republican governor, the lame-duck governor would have appointed a replacement.²⁴ A liberal candidate would not even have had the chance to run.²⁵ State courts struck down the bill.²⁶

Voters elected Justice Mike Morgan, one of the two black justices on the North Carolina Supreme Court, and this resulted in a new 4-3 liberal majority.²⁷ Just days later, some conservatives suggested a “court packing” scheme, in which the legislature would create two new seats on the court and allow the lame-duck conservative governor to fill them.²⁸ The proposal was a blatant attempt to overturn the results of the 2016 election, and legislators backed down after a public outcry and a threatened lawsuit from the state NAACP.²⁹

The legislature did, however, chip away at the governor's authority to appoint judges.³⁰ It also passed a "court unpacking" bill to shrink the court of appeals by three judges, in advance of three Republican judges reaching the mandatory retirement age.³¹ Judge J. Doug McCullough, a Republican, resigned in protest.³² This allowed the governor to appoint his replacement before the bill went into effect.³³

Former North Carolina Supreme Court Justice Bob Orr, also a Republican, has criticized these power grabs and suggested they are motivated by lawsuits over the 2011 redistricting maps.³⁴ Justice Orr said these bills are intended as a message to judges that they should rule the way that politicians want.³⁵ Some North Carolina legislators want judges on the bench who will not strike down the maps that clearly favor their political party.

Timeline: Voting rights and the North Carolina legislature's attacks on the courts

Voting rights

- **July 2011:** Following the 2010 census, the legislature redraws election districts for itself and the state's seats in Congress.³⁶
- **July 2013:** Days after the U.S. Supreme Court strikes down a key part of the Voting Rights Act, legislators pass a wide-ranging voting law that creates a voter ID requirement and erects other hurdles to voting.³⁷
- **July 2013:** A state court upholds the 2011 redistricting maps, rejecting a claim of racial gerrymandering.³⁸
- **December 2014:** The North Carolina Supreme Court affirms the redistricting ruling in a 4-3 decision.³⁹
- **April 2015:** The U.S. Supreme Court orders the state court to reopen the redistricting case, after ruling in a similar case.⁴⁰
- **December 2015:** The North Carolina Supreme Court again rejects the racial gerrymandering claim.⁴¹
- **February 2016:** A federal court strikes down the legislature's 2011 congressional redistricting map.⁴²
- **July 2016:** A federal court strikes down a 2013 voting law for targeting "African American voters with almost surgical precision."⁴³
- **August 2016:** A federal court strikes down the legislature's own district maps.⁴⁴
- **November 2016:** The same court orders a special election in 2017 under new maps.⁴⁵
- **February 2017:** The North Carolina Supreme Court blocks a law giving much of the governor's authority to administer elections to the legislature.⁴⁶
- **May 2017:** The U.S. Supreme Court affirms the rulings to strike down two of North Carolina's congressional districts.⁴⁷
- **May 2017:** The U.S. Supreme Court also lets stand the ruling to strike down the 2013 voting law.⁴⁸
- **June 2017:** The Supreme Court overrules the lower court's order to hold special elections for the legislature.⁴⁹
- **August 2017:** The North Carolina Supreme Court holds oral arguments in two cases on redistricting and the election administration bill.⁵⁰

Attacks on the courts

- **July 2013:** A provision in the North Carolina legislature's voting law repeals the public financing program for judicial elections.⁵¹
- **August 2014:** The North Carolina legislature creates a new three-judge panel and gives it jurisdiction over any lawsuit challenging a law it passes.⁵²
- **June 2015:** With control of the North Carolina Supreme Court up for grabs in the 2016 election, the legislature passes a law that effectively ensures a continued conservative majority for the next few years. The bill is later struck down.⁵³
- **September 2015:** The legislature makes elections for the North Carolina Court of Appeals partisan.⁵⁴
- **November 2016:** After voters elect a 4-3 liberal majority, conservatives discuss a plan to add two seats to the North Carolina Supreme Court and let the lame-duck Republican governor fill them.⁵⁵
- **March 2017:** Legislators make all judicial elections partisan and considers taking the governor's power to appoint judges to empty seats.⁵⁶
- **March 2017:** The budget slashes funding for lawyers in the attorney general and the governor's offices.⁵⁷
- **April 2017:** The legislature shrinks the Court of Appeals, in advance of three GOP judges reaching the mandatory retirement age in coming years.⁵⁸
- **April 2017:** Rep. Justin Burr (R) introduces a bill to redraw election districts for trial court judges.⁵⁹
- **August 2017:** Discussions begin of a constitutional amendment to allow the legislature to appoint all judges.⁶⁰
- **October 2017:** Legislators introduce a constitutional amendment to shorten judges' terms to two years.⁶¹
- **October 2017:** Legislators cancel the 2018 judicial primary elections.⁶²

More campaign cash and partisanship in judicial elections

In the late 1990s, judicial elections around the country were seeing an influx of a lot more campaign cash.⁶³ Groups backed by big business, including the Chamber of Commerce and the Koch brothers, began to spend millions to elect their preferred judges.⁶⁴ North Carolina's governor and legislature responded by creating a public financing program for appellate court candidates, which offered almost \$250,000 to state Supreme Court candidates who qualified by raising a certain amount in small contributions.⁶⁵

North Carolina's voters, its legal community, and judges from both parties supported the public financing program.⁶⁶ Supporters pointed out that it opened up avenues to the bench for candidates who might otherwise lack connections to wealthy donors.⁶⁷ For years, the state spearheaded the movement to keep money from flooding into state judicial elections.

Two black justices were voted off the state supreme court just before the public financing program was created, but judges of color saw great success under the public financing program.⁶⁸ According to a 2011 report from North Carolina Voters for Clean Elections, all four black judges on the appellate courts at the time were elected with public financing.⁶⁹ Justice Cheri Beasley, for example, was the first woman of color elected to statewide office in North Carolina. Justice Beasley said that she lacks the connections that many candidates rely on for financial support.⁷⁰

A report from the American Bar Association warned that “privately funded judicial campaigns may limit access to judicial office for all candidates, of color or otherwise, who derive their support from less affluent communities.”⁷¹ The Institute for Southern Studies examined the 600 largest donors from North Carolina in the 2016 presidential campaign and the state's most expensive campaigns for Congress, and it found that almost all of them—95 percent—were white.⁷² But when Republicans gained a majority in the state legislature in 2010, public financing became a primary target.⁷³ Art Pope, a millionaire-donor-turned-governor's-budget-director, played a key role in eliminating the program.⁷⁴ After defunding public financing, the legislature repealed the program in the 2013 anti-voting bill, a coordinated effort to close avenues to political power for black voters and candidates.⁷⁵

In 2014, the North Carolina Supreme Court elections cost candidates more than \$6 million combined, a record sum.⁷⁶ The Republican State Leadership Committee, a big-business funded entity that helped legislators gerrymander the state's legislative elections, spent more than \$1 million alone to back their preferred candidate.⁷⁷

The General Assembly has also made judicial elections partisan, after getting partisanship out of judicial elections more than a decade ago by switching to nonpartisan elections.⁷⁸ A 2015 op-ed noted that North Carolina is the first state in nearly a century

to switch from nonpartisan to partisan election of judges,⁷⁹ and a 2012 editorial from the *The New York Times* noted that a system of choosing judges in expensive, partisan elections “discourages many highly qualified lawyers from aspiring to the bench.”⁸⁰

North Carolina ended partisan judicial elections at the same time the public financing program was created.⁸¹ At the time, the handful of state supreme courts that were elected in partisan races had seen an explosion in campaign cash.⁸² The legislature is now rolling back the two reforms intended to keep this trend out of North Carolina.

To make matters worse for judges, legislators have proposed a constitutional amendment that would reduce their terms in office to just two years, forcing them to spend more time fundraising with wealthy donors.⁸³ North Carolina judges would serve the shortest terms in the nation, and some are not pleased with this suggestion.⁸⁴

These changes to judicial elections open the door to more inequity in the system and a marginalization of candidates lacking the connections to networks that often preference wealthy, white candidates.

Gerrymandering judges

Gerrymandering in North Carolina now reaches into all levels of government—from congressional elections to school board races.⁸⁵ In 2011, the General Assembly redrew the districts for elections to Congress and the state legislature. Federal courts ruled that the legislature discriminated against black voters by “packing” them into as few districts as possible.⁸⁶

This did not stop the legislature’s redistricting of other elections in ways that advantage the Republican Party. In 2015, the legislature gerrymandered the city council of Greensboro and the Wake County commission in Raleigh, though federal courts struck down these changes as unconstitutional.⁸⁷

The legislature has carved up districts in urban areas that tend to favor Democrats.⁸⁸ Rep. Pricey Harrison (D), represents Greensboro in the legislature said in an interview that in the judicial gerrymandering bill, “bluer urban counties are carved up in ways that would elect more Republican judges, while similarly sized, red-leaning counties remain whole.”⁸⁹

Rep. Burr, the sponsor of the judicial gerrymandering bill, introduced his initial proposal on Twitter with plans to rush it through the legislature.⁹⁰ Rep. Burr has since sought feedback from judges and voters—who were almost uniformly opposed.⁹¹ At one hearing in September 2017, every speaker was opposed to judicial gerrymandering.⁹² “This is an attempt to take over the final piece of the puzzle and to gerrymander the judiciary in favor of the Republicans,” said one Raleigh voter.⁹³

The current judicial gerrymandering bill would result in one-quarter of District Court judges being “double-bunked,” or placed in a district with another incumbent.⁹⁴ NC Policy Watch reported that “43% of all Black or African-American district court judges are double-bunked.”⁹⁵ The new districts also double-bunk the state’s only Latina District Court judge and its only Native American Superior Court judge.⁹⁶

The maps released by legislators tend to carve up urban districts and combine them with neighboring areas that tend to favor Republicans.⁹⁷ The districts in Buncombe County would be redrawn in a way that could “hand the GOP a majority of Buncombe County’s nine judicial seats, even though most Buncombe voters tend to pick Democrats,” according to the *Asheville Citizen-Times*.⁹⁸ One Republican legislator said that unless populated areas are split up, “The heart of the city controls who all the judges are.”⁹⁹

Democratic legislators have repeatedly asked Rep. Burr if his bill violates the Voting Rights Act.¹⁰⁰ He responded, “I believe these districts will comply with the law and unless we have a judge trying to legislate from the bench, they should be upheld.”¹⁰¹

Some of North Carolina’s current judicial districts were redrawn decades ago to comply with the Voting Rights Act. To settle a lawsuit under the act, the legislature changed Superior Court districts in 1987.¹⁰² The changes enhanced “the opportunity of minority residents to elect candidates of their choice to that court,” according to the U.S. Department of Justice.¹⁰³

In the mid-1990s, the legislature redrew some District Court boundaries to comply with the Act.¹⁰⁴ The previously redrawn districts include the cities of Greensboro and Fayetteville, both in counties where more than one-third of the population is black.¹⁰⁵ Rep. Burr’s new map would again split up these districts.¹⁰⁶

The judicial gerrymandering bill could undo much of the progress that the state has made towards ensuring that its court districts comply with the Voting Rights Act. The bill could resurrect the previous disparity that violated the act.

Isela Gutierrez of Democracy North Carolina said that Rep. Burr’s bill would weaken the influence of black voters.¹⁰⁷ Anita Earls of the Southern Coalition for Social Justice said the maps being considered this summer included districts in Greensboro and Fayetteville that resembled the legislative districts there, which courts have struck down as unconstitutional racial gerrymanders.¹⁰⁸

Other states, including Alabama, Louisiana, and Texas, are facing Voting Rights Act lawsuits over the geography of judicial elections.¹⁰⁹ In those states, black and Latino voters are arguing that at-large elections have effectively nullified their vote.¹¹⁰

If the judicial gerrymandering bill is enacted and challenged under the North Carolina Constitution, the North Carolina Supreme Court would make the final decision about whether it is unconstitutional.

The ultimate power grab: Legislative appointment

The General Assembly's latest priority is the elimination of judicial elections in favor of a system that they have called "merit selection."¹¹¹ The system would be more accurately described as legislative selection, because it would give legislators total control over who sits on the bench.¹¹²

There are only two other states with a similar system: Virginia and South Carolina.¹¹³ If their experience is any indication, legislative selection would not bode well for diversity. In South Carolina, white men represent 30 percent of the population but an astounding 72 percent of the judges, according to the American Constitution Society.¹¹⁴ People of color make up 19 percent of the state's population but occupy around six percent of the courts' seats.¹¹⁵ In Virginia, white men make up 31 percent of the population but fill 58 percent of the judicial seats.¹¹⁶

North Carolina's courts already do not reflect the population. North Carolina ranked 37 in terms of judicial diversity in the American Constitution Society study. White men—less than one-third of its population—make up two-thirds of its judges.

In Virginia and South Carolina, the legislative selection systems have also led to charges of favoritism and nepotism.¹¹⁷ "As recently as 2000, every justice on the South Carolina Supreme Court was a former General Assembly member," according to a study by the Brennan Center for Justice on legislative selection.¹¹⁸ Legislators have also chosen relatives for judgeships, and Rhode Island voters ended legislative appointment in 1994, after judicial corruption scandals.¹¹⁹

The North Carolina General Assembly itself does not reflect the state's diversity. As of 2015, 64 percent of legislators were white men, which accounts for around one-third of the state's population.¹²⁰

Unfortunately, few systems for choosing judges have been effective at fostering diversity.¹²¹ The Obama administration made important strides at the federal level, but President Donald Trump seems to be intent on reversing that progress through his appointments, 75 percent of which have been white men.¹²² North Carolina's public financing program showed promising results for diversity, but the state courts remain unrepresentative.

Given the racial and ethnic makeup of the General Assembly and its repeated attempts to discriminate against black voters, legislative selection would likely exacerbate racial and ethnic disparities in the state court system. This legislature cannot be trusted to pick judges who reflect the communities they serve.

Disregarding diversity in the quest for more power

The legal battles to protect the rights of North Carolina voters are far from over. Activists and citizens are still looking to the courts to protect voting rights. The state courts will soon rule on important voting rights cases.¹²³ With President Trump rapidly transforming the federal courts and his Department of Justice failing to protect voting rights,¹²⁴ state judges may soon be the only protection for voting rights. State constitutions include much broader rights to vote than the U.S. Constitution.¹²⁵

As state courts rule on these politically charged issues, those courts must include judges with diverse viewpoints. U.S. Supreme Court Justice Sonia Sotomayor spurred a discussion about the value of judicial diversity when she was nominated¹²⁶ and has demonstrated the value of diverse perspectives.¹²⁷ Last year, she wrote a powerful dissent when the court declined to hear a racial profiling case, warning that the targets of racial profiling are “the canaries in the coal mine whose deaths ... warn us that no one can breathe in this atmosphere.”¹²⁸

In addition to concerns about diversity, the separation of powers outlined in the North Carolina Constitution must be preserved so that courts are able to protect the rights of voters. The General Assembly’s actions in recent years have compromised democratic institutions and infringed on that separation of powers.¹²⁹

Justice Orr described the proposal for two-year judicial terms as “a continued effort to try and intimidate the judiciary.”¹³⁰ Rep. Marcia Morey (D), a former Chief District Court Judge, called it an “unprecedented power grab by the zealous GOP leadership to control of the judiciary.”¹³¹

North Carolinians need independent, representative courts whose institutional strength will come from a plurality of views—with a shared commitment to fairness and justice.

Billy Corriher is the deputy director of Legal Progress at the Center for American Progress. Michele L. Jawando is the vice president for Legal Progress at the Center. Lukasz Grabowski is an intern with Legal Progress and a senior at Johns Hopkins University.

Endnotes

- 1 *Cooper v. Harris*, 137 S. Ct. 1455 (2017); *North Carolina v. Covington*, 137 S.Ct. 1624 (2017); *North Carolina v. N.C. State Conference of the NAACP*, 831 F.3d 204 (4th Cir. 2016).
- 2 Melissa Boughton, "NC Supreme Court Takes Up Redistricting, Power Struggle Between Cooper, Legislature," NC Policy Watch, August 28, 2017, available at <http://pulse.ncpolicywatch.org/2017/08/28/nc-supreme-court-takes-redistricting-power-struggle-cooper-legislature/#sthash.SmZPYygg.dpbs>; Associated Press, "Top NC Court Takes Up Lawmakers Stripping Governor's Powers, Redistricting," WUNC, August 28, 2017, available at <http://wunc.org/post/top-nc-court-takes-lawmakers-stripping-governors-powers-redistricting#stream/0>.
- 3 Rep. David Lewis (R-Harnett) and Sen. Bob Rucho (R-Mecklenburg), chairmen of the House and Senate redistricting committees. See Phil Berger Committee, "Rucho, Lewis Respond to Politically Motivated Court Decision Denying Voters' Right to Elect Representatives to Two-Year Terms," November 29, 2016, available at http://www.philberger.org/rucho_lewis_respond_to_politically_motivated_court_decision_denying_voters_right_to_elect_representatives_to_two_year_terms; Melissa Boughton, "Former GOP Supreme Court Justice: 2-year Terms Amendment Continued Effort to 'Intimidate Judiciary,'" NC Policy Watch, October 17, 2017, available at <http://pulse.ncpolicywatch.org/2017/10/17/former-gop-supreme-court-justice-2-year-terms-amendment-continued-effort-intimidate-judiciary/#sthash.8GjHPNQy.dpbs>.
- 4 North Carolina Voters for Clean Elections, "History of Attacks on Judicial Independence," available at <http://www.ncvce.org/content/history-attacks-judicial-independence> (last accessed November 2017).
- 5 Doug Clark, "Appeals Court Keeps 15 Judges with Timely Retirement, Appointment," *News & Record*, April 24, 2017, available at http://www.greensboro.com/blogs/clark_off_the_record/appeals-court-keeps-judges-with-timely-retirement-appointment/article_642af482-2901-11e7-a951-33d7a2951509.html; Anne Blythe, "A Judge, A Vegas Phone Call and the NC GOP Legislative Effort to Remake the Judicial Branch," *The News & Observer*, August 22, 2017, available at <http://www.newsobserver.com/news/politics-government/state-politics/article168661047.html>.
- 6 Matthew Burns, "Judicial Ballots Could Get Really Long Next Year," WRAL, October 17, 2017, available at <http://www.wral.com/judicial-ballots-could-get-really-long-next-year/17023741/>.
- 7 Trip Gabriel, "In North Carolina, Republicans Stung by Court Rulings Aim to Change the Judges," *The New York Times*, October 18, 2017, available at <https://www.nytimes.com/2017/10/18/us/north-carolina-republicans-gerrymander-judges-.html>.
- 8 Melissa Price Kromm, "Gerrymandering is Only the Latest Attack on North Carolina's Courts," NC Policy Watch, October 2, 2017, available at <http://www.ncpolicywatch.com/2017/10/02/gerrymandering-latest-attack-north-carolinas-courts/>; Wendy Weiser and Daniel Weiner, "Democracy in North Carolina Could Disappear. Is Your State Next?," *Time*, August 23, 2017, available at <http://time.com/4891560/north-carolina-elections-supreme-court/>; Sue Sturgis, "Institute Index: The N.C. Legislature's Hostile Takeover of the Courts," *Facing South*, November 2, 2017, available at <https://www.facingsouth.org/2017/11/institute-index-nc-legislatures-hostile-takeover-courts#share>.
- 9 Tracey E. George and Albert H. Yoon, "Gavel Gap: Who Sits in Judgment on State Courts?" (Washington: American Constitution Society for Law and Policy, 2016), available at <http://gavelgap.org/pdf/gavel-gap-report.pdf>.
- 10 Mark Joseph Stern, "An Even More Insidious Kind of Gerrymandering," *Slate*, October 10, 2017, available at http://www.slate.com/articles/news_and_politics/jurisprudence/2017/10/judicial_gerrymandering_is_coming_to_north_carolina.html; Billy Corriher, "North Carolina Gerrymandering Bill Pits Black Judges Against Other Incumbents," *ThinkProgress*, October 6, 2017, available at <https://thinkprogress.org/judicial-gerrymandering-north-carolina-56f15b92f01f/>.
- 11 John Wagner and Scott Clement, "'It's just messed up.' Most Think Political Divisions as Bad As Vietnam Era, New Poll Shows," *The Washington Post*, October 28, 2017, available at <https://www.washingtonpost.com/graphics/2017/national/democracy-poll/>; Pew Research Center, "Beyond Distrust: How Americans View Their Government," November 23, 2015, available at <http://www.people-press.org/2015/11/23/beyond-distrust-how-americans-view-their-government/>.
- 12 Doug Dennis, "40 Percent of Black Americans Distrust the Criminal Justice System: Why I'm One of Them," *Vox*, December 21, 2016, available at <https://www.vox.com/first-person/2016/12/21/13854666/criminal-justice-police-distrust>.
- 13 Stern, "An Even More Insidious Kind of Gerrymandering"; Burns, "Judicial Ballots Could Get Really Long Next Year."
- 14 Melissa Boughton, "Updated Maps: Where Judges Land in Judicial Redistricting Bill to be Considered by Senate," NC Policy Watch, November 15, 2017, available at <http://www.ncpolicywatch.com/2017/11/15/updated-maps-judges-land-judicial-redistricting-bill-considered-senate/>.
- 15 Gabriel, "In North Carolina, Republicans Stung by Court Rulings Aim to Change the Judges."
- 16 *Ibid.*
- 17 *Ibid.*
- 18 Johnnie Grant, "Judge J. Calvin Hill," *The Urban News*, June 8, 2007, available at <http://theurbannews.com/government/2007/judge-j-calvin-hill/>.
- 19 Tracy Rose, "Judge Not, Lest Ye Be Judged," *Mountain Xpress*, August 28, 2002, available at <https://mountainx.com/news/community-news/0828district-php/>.
- 20 Kimberly King, "Attorneys, Judge Question Use of For-Profit Company in Buncombe County Court System," *WLOS*, May 20, 2016, available at <http://wlos.com/news/news-13-investigates/for-profit-company-hired-by-buncombe-county-to-handle-petty-crimes>.
- 21 Rob Schofield, "Now do you Understand Why the Courts are so Important?," NC Policy Watch, August 2, 2016, available at <http://www.ncpolicywatch.com/2016/08/02/now-do-you-understand-why-the-courts-are-so-important/>; Bob Geary, "N.C. Supreme Court Dissenters Offer Progressives Hope," *IndyWeek*, December 31, 2014, available at <https://www.indyweek.com/indyweek/nc-supreme-court-dissenters-offer-progressives-hope/Content?oid=4312033>.
- 22 Pema Levy, "A Judicial Election Threatened North Carolina Republicans' Agenda. So They Canceled the Election," *Mother Jones*, June 18, 2015, available at <http://www.motherjones.com/politics/2015/06/north-carolina-republicans-judicial-election/>.
- 23 *Ibid.*
- 24 *Ibid.*

- 25 Melissa Price Kromm, "Judicial Reform Farce May Put NC Supreme Court in a Pickle," *The News & Observer*, March 14, 2016, available at <http://www.newsobserver.com/opinion/op-ed/article66015042.html>.
- 26 *Faires v. State Board of Elections*, 784 S.E.2d 463 (N.C. 2016).
- 27 Anne Blythe and Lynn Bonner, "Rare Big Win for Democrats Tilts Party Balance on NC Supreme Court," *The Charlotte Observer*, November 10, 2016, available at <http://www.charlotteobserver.com/news/politics-government/article114053308.html>.
- 28 Editorial, "Packing N.C.'s High Court for Political Advantage Would Abuse the Legislative Process," *The News & Observer*, November 12, 2016, available at <http://www.newsobserver.com/opinion/editorials/article114407513.html>; Billy Corriher, "North Carolina's Legislature Has a Devious Plan to Overturn the Will of the Voters," *ThinkProgress*, November 15, 2017, available at <https://thinkprogress.org/north-carolina-supreme-court-33e0873acb30/>.
- 29 Colin Campbell, "NAACP Will Sue if Republicans Pursue 'Court Packing' of Supreme Court, Barber Says," *The News & Observer*, November 18, 2016, available at <http://www.newsobserver.com/news/politics-government/politics-columns-blogs/under-the-dome/article115717423.html>; Melissa Boughton, "Senator: Court Packing on Everyone's Mind Despite Most Still Being 'In the Dark' on Potential Legislation," *NC Policy Watch*, December 13, 2016, available at <http://pulse.ncpolicywatch.org/2016/12/13/senator-court-packing-everyones-mind-despite-still-dark-potential-legislation/#sthash.mxDK7uMQ.dpbs>.
- 30 Chris Kromm, "Open War Against the Judiciary," *Facing South*, March 10, 2017, available at <https://www.facing-south.org/2017/03/open-war-against-judiciary>; Billy Corriher, "North Carolina Legislature Wants More Control Over State Courts, Less Power for the Governor," *ThinkProgress*, March 15, 2017, available at <https://thinkprogress.org/north-carolina-legislature-wants-power-over-judiciary-8d807e1bb2bd/>.
- 31 Clark, "Appeals Court Keeps 15 Judges with Timely Retirement, Appointment."
- 32 *Ibid.*
- 33 *Ibid.*
- 34 Kromm, "Gerrymandering is Only the Latest Attack on North Carolina's Courts."
- 35 Boughton, "Former GOP Supreme Court Justice: 2-year Terms Amendment Continued Effort to 'Intimidate Judiciary.'"
- 36 Jim Rutenberg, "A Dream Undone," *The New York Times Magazine*, July 29, 2015, available at <https://www.nytimes.com/2015/07/29/magazine/voting-rights-act-dream-undone.html>.
- 37 *Ibid.*
- 38 *Dickson v. Rucho*, 766 SE 2d 238 (N.C. 2014).
- 39 *Ibid.*
- 40 *Dickson v. Rucho*, 135 S. Ct. 1843 (2015).
- 41 *Dickson v. Rucho*, 781 SE 2d 404 (N.C. 2015).
- 42 *Cooper*, 137 S. Ct. 1455.
- 43 *N.C. State Conference of the NAACP*, 831 F.3d 204.
- 44 *Covington v. North Carolina*, No. 1:15CV399 (M.D.N.C. Aug. 11, 2016).
- 45 *Covington v. North Carolina*, No. 1:15CV399 (M.D.N.C. Nov. 29, 2016).
- 46 Anne Blythe, "NC Supreme Court Reinstates Block of Elections Board Revamp," *The News & Observer*, February 13, 2017, available at <http://www.newsobserver.com/news/politics-government/state-politics/article132516604.html>.
- 47 *Cooper*, 137 S. Ct. 1455.
- 48 *Covington*, 137 S.Ct. 1624.
- 49 *North Carolina v. Covington*, 581 U.S. ___, No. 16-1023 (2017).
- 50 Associated Press, "Top NC Court Takes Up Lawmakers Stripping Governor's Powers, Redistricting."
- 51 Kromm, "Gerrymandering is Only the Latest Attack on North Carolina's Courts."
- 52 Jordan Greene and Chad Nance, "Republican Lawmakers Assert Control Over Courts," *Triad City Beat*, August 6, 2014, available at <https://triad-city-beat.com/republican-lawmakers-exert-control-over-local-courts/>.
- 53 Levy, "A Judicial Election Threatened North Carolina Republicans' Agenda"; Matthew Burns, "Divided Supreme Court Means No Retention Elections in NC For Now," *WRAL*, May 6, 2016, available at <http://www.wral.com/divided-supreme-court-means-no-retention-elections-in-nc-for-now/15687681/>.
- 54 Ballotpedia, "Judicial Selection in North Carolina," available at https://ballotpedia.org/Judicial_selection_in_North_Carolina (last accessed November 2017).
- 55 Taylor Batten, "GOP Gets Wonderful, Awful Idea on Supreme Court," *The Charlotte Observer*, November 11, 2016, available at <http://www.charlotteobserver.com/opinion/opn-columns-blogs/taylor-batten/article114252053.html>.
- 56 Sturgis, "Institute Index: The N.C. Legislature's Hostile Takeover of the Courts"; Kromm, "Gerrymandering is Only the Latest Attack on North Carolina's Courts."
- 57 Mark Joseph Stern, "North Carolina Republicans Are Trying to Strip the Governor of His Power to Challenge Laws," *Slate*, June 21, 2017, available at http://www.slate.com/blogs/the_slatest/2017/06/21/north_carolina_republicans_budget_prevents_governor_from_suing.html.
- 58 Clark, "Appeals Court Keeps 15 Judges with Timely Retirement, Appointment."
- 59 Melissa Boughton, "Surprise! Justin Burr Announces Maps on Twitter that Would Overhaul Judicial, Prosecutorial Districts," *NC Policy Watch*, June 26, 2017, available at <http://pulse.ncpolicywatch.org/2017/06/26/surprise-justin-burr-announces-maps-twitter-overhaul-judicial-prosecutorial-districts/#sthash.or7xRdn0.dpbs>.
- 60 Gabriel, "In North Carolina, Republicans Stung by Court Rulings Aim to Change the Judges."
- 61 *Ibid.*
- 62 *Ibid.*
- 63 James Sample and others, "The New Politics of Judicial Elections, 2000-2009: Decade of Change" (Washington, New York, and Helena, Montana: Justice at Stake, The Brennan Center for Justice, and the National Institute on Money in State Politics, 2010), available at http://www.justiceatstake.org/media/cms/JASNPJDecadeONLINE_8E7FD3FEB83E3.pdf.
- 64 Billy Corriher, "Big Business Taking over State Supreme Courts" (Washington: Center for American Progress, 2012), available at <https://www.americanprogress.org/issues/courts/reports/2012/08/13/11974/big-business-taking-over-state-supreme-courts/>; John D. Echeverria, "State Judicial Elections and Environmental Law: Case Studies of Montana, North Carolina, Washington, and Wisconsin," *Vermont Journal of Environmental Law* 16 (2015): 364-481, available at <http://doczz.net/doc/6674435/by-john-d-echeverria---vermont-journal-of-environmental-law>.

- 65 Candidates for the Court of Appeals could receive a little more than \$150,000, and all participating candidates had the potential to get more in “matching funds,” if their opponent was backed by big money, but the U.S. Supreme Court ruled matching funds unconstitutional in 2011. Peter Hardin, “Part of North Carolina Public Financing Law Struck Down,” *Gavel Grab*, May 22, 2012, available at <https://gavelgrab.org/?p=36539>; North Carolina Voters for Clean Elections, “Profile of Judicial Public Financing Program, 2004-2012,” available at <http://www.ncvce.org/sites/ncvce.org/files/JudicialPubFinSuccessNCVCE2013.pdf> (last accessed November 2017).
- 66 Melissa Price Kromm, “NC Should Restore Public Funding for Judicial Elections,” *The News & Observer*, October 19, 2016, available at <http://www.newsobserver.com/opinion/op-ed/article109283122.html>; Blue NC, “Daily Dose: Jailbreak Edition,” June 4, 2013, available at <https://bluenc.com/content/daily-dose-jailbreak-edition>.
- 67 *Ibid.*; North Carolina Voters for Clean Elections, “NC Judicial Public Financing: A Success Story,” available at <http://www.ncvce.org/content/nc-judicial-public-financing-success-story> (last accessed November 2017).
- 68 Alex Kotch, “Big money in Judicial Elections Intensifies Racial Imbalance on the Courts,” *Facing South*, October 30, 2015, available at <https://www.facingsouth.org/2015/10/big-money-in-judicial-elections-intensifies-racial.html>.
- 69 North Carolina Voters for Clean Elections, “NC Judicial Public Financing: A Success Story.”
- 70 Greg Lacour, “Judiciary for Sale,” *Charlotte Magazine*, October 2014, available at <http://www.charlottemagazine.com/Blogs/Poking-the-Hornets-Nest/October-2014/Judiciary-for-Sale>.
- 71 American Bar Association Standing Committee on Judicial Independence, “Report of the Commission on Public Financing of Judicial Campaigns” (2002), available at https://www.americanbar.org/content/dam/aba/migrated/judind/pdf/commissionreport4_03.authcheckdam.pdf.
- 72 Alex Kotch, “Face of N.C. Donors: Despite Growing Diversity, State Politics Still Dominated by White Contributors,” *Facing South*, October 15, 2015, available at <https://www.facingsouth.org/2015/10/iss-report-despite-states-growing-diversity-north->.
- 73 Chris Kromm, “How Art Pope Killed Clean Elections for Judges in North Carolina,” *Facing South*, June 13, 2013, available at <https://www.facingsouth.org/2013/06/how-art-pope-killed-clean-elections-for-judges-in-.html>.
- 74 *Ibid.*
- 75 *Ibid.*
- 76 Alex Kotch, “With Public Financing’s Demise, Special-Interest Money Pours into NC Court Races,” *Facing South*, October 17, 2014, available at <https://www.facingsouth.org/2014/10/with-public-financings-demise-special-interest-mon.html>.
- 77 Center for Responsive Politics, “Republican State Leadership Cmte: 2014,” available at https://www.opensecrets.org/527s/527cmtedetail_contribs.php?cycle=2014&ein=050532524; Billy Corriher, “Voting Rights Advocates Turn to North Carolina Courts, Stacked by Campaign Cash,” Center for American Progress, September 2, 2015, available at <https://www.americanprogress.org/issues/courts/news/2015/09/02/120437/voting-rights-advocates-turn-to-north-carolina-courts-stacked-by-campaign-cash/>.
- 78 Gabriel, “In North Carolina, Republicans Stung by Court Rulings Aim to Change the Judges.”
- 79 Billy Corriher, “NC Must Say No to Partisan Courts Races,” *The News & Observer*, February 24, 2015, available at <http://www.newsobserver.com/opinion/op-ed/article11309846.html>.
- 80 Editorial, “No Way to Choose a Judge,” *The New York Times*, March 15, 2012, available at <http://www.nytimes.com/2012/03/16/opinion/no-way-to-choose-a-judge.html>.
- 81 Corriher, “NC Must Say No to Partisan Courts Races.”
- 82 Billy Corriher, “Partisan Judicial Elections and the Distorting Influence of Campaign Cash” (Washington: Center for American Progress, 2012), available at <https://www.americanprogress.org/issues/courts/reports/2012/10/25/42895/partisan-judicial-elections-and-the-distorting-influence-of-campaign-cash/>.
- 83 Editorial, “Legislative Leaders Want to Put Justice Up for Sale,” *WRAL*, October 20, 2017, available at <http://www.wral.com/editorial-legislative-leaders-want-to-put-justice-up-for-sale/17030159/>.
- 84 Associated Press, “Chief Justice Opposes Legislation for 2-year Judicial Terms,” *US News & World Report*, October 25, 2017, available at <https://www.usnews.com/news/best-states/north-carolina/articles/2017-10-25/chief-justice-opposes-legislation-for-2-year-judicial-terms>; Boughton, “Former GOP Supreme Court Justice: 2-year Terms Amendment Continued Effort to ‘Intimidate Judiciary.’”
- 85 Stephen Wolf, “Court Deals Another Major Blow Against Gerrymandering by North Carolina’s Republican Legislators,” *Daily Kos*, April 4, 2017, available at <https://www.dailymkos.com/stories/2017/4/4/16500711-Court-deals-another-major-blow-against-gerrymandering-by-North-Carolina-s-Republican-legislators>.
- 86 *Cooper*, 137 S. Ct. 1455; *Covington*, 137 S.Ct. 1624.
- 87 *Ibid.*; *Raleigh Wake Citizens Association v. Wake County Board of Elections*, 827 F.3d 333 (4th Cir. 2016).
- 88 Richard Fausset, “With State Control, North Carolina Republicans Pursue Smaller Prizes,” *The New York Times*, April 6, 2015, available at <https://www.nytimes.com/2015/04/07/us/with-state-control-north-carolina-republicans-pursue-smaller-prizes.html>.
- 89 Interview with Rep. Price Harrison, November 15, 2017, on file with author.
- 90 Boughton, “Surprise! Justin Burr Announces Maps on Twitter that Would Overhaul Judicial, Prosecutorial Districts”; Craig Jarvis and Anne Blythe, “GOP Wants New Election Maps for NC Judges and Prosecutors,” *The News & Observer*, June 26, 2017, available at <http://www.newsobserver.com/news/politics-government/state-politics/article158264799.html>.
- 91 Kromm, “Gerrymandering is Only the Latest Attack on North Carolina’s Courts”; Melissa Boughton, “NC Courts Commission Recommends Lawmakers Hold Off Judicial Redistricting Until Next Year,” *NC Policy Watch*, September 29, 2017, available at <http://pulse.ncpolicywatch.org/2017/09/29/nc-courts-commission-recommends-lawmakers-hold-off-judicial-redistricting-next-year/#sthash.e3XDWplf.dpbs>; Melissa Boughton, “Judicial Maps Move Forward Despite Pleas to Slow Down from Public, Judicial Stakeholders,” *NC Policy Watch*, September 28, 2017, available at <http://pulse.ncpolicywatch.org/2017/09/28/judicial-maps-move-forward-despite-pleas-slow-public-judicial-stakeholders/>.
- 92 Melissa Boughton, “A Guide to Proposed Judicial Maps as Court Commission Set to Meet Today,” September 29, 2017, available at <http://pulse.ncpolicywatch.org/2017/09/29/guide-proposed-judicial-maps-court-commission-set-meet-today/#sthash.ubEhW8mp.GMLqxCRJ.dpbs>.
- 93 *Ibid.*
- 94 Boughton, “Updated Maps.”
- 95 *Ibid.*
- 96 *Ibid.*

- 97 Interview with Rep. Price Harrison.
- 98 Mark Barrett, "Politics or Justice? Legislators Consider Shaking Up Voting for Judges," *Asheville Citizen-Times*, October 3, 2017, available at <http://www.citizen-times.com/story/news/local/2017/10/03/politics-justice-legislators-consider-shaking-up-voting-judges/714901001/>.
- 99 Ibid.
- 100 Jeremy Loeb, "NC Republicans Push Last-Minute Bill to Redraw Judicial Lines," Blue Ridge Public Radio, June 26, 2017, available at <http://bpr.org/post/nc-republicans-push-last-minute-bill-redraw-judicial-lines>; Melissa Boughton, "Politically-Driven Judicial Redistricting Halted... for the Time Being," NC Policy Watch, June 28, 2017, available at <http://www.ncpolicywatch.com/2017/06/28/politically-driven-judicial-redistricting-halted-for-time/>; Erica Hellerstein, "Over Accusations of Gerrymandering, Republicans Introduce Bill to Redraw Judicial Maps," *Indy Week*, June 27, 2017, available at <https://www.indyweek.com/news/archives/2017/06/27/over-accusations-of-gerrymandering-republicans-introduce-bill-to-redraw-judicial-maps>.
- 101 Loeb, "NC Republicans Push Last-Minute Bill to Redraw Judicial Lines."
- 102 *An Act to Provide for Continued Compliance with the Voting Rights Act and to Improve the Administration of Justice by Providing for the Elimination of Staggered Terms for Superior Court Judges, Creating More Superior Court Judicial Districts, Eliminating the Office of Special Superior Court Judge, and Making Confirming Changes*, N.C. Sess. Laws 509 (June 29 1987), available at <http://www.ncleg.net/EnactedLegislation/SessionLaws/HTML/1987-1988/SL1987-509.html>.
- 103 Letter from Acting Assistant Attorney General James Turner, U.S. Department of Justice, to Director James Drennan, Administrative Office of the Courts, February 14, 1994, available at <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/NC-1530.pdf>.
- 104 In 1994, the U.S. Department of Justice noted that the boundaries of District Courts no longer tracked the boundaries of Superior Court districts that were redrawn in 1987 to comply with the Act. Ibid., p. 3. "This apparently has resulted in minority voters having substantially less opportunity to elect candidates of their choice to the district court." Ibid.; The legislature revised the districts, and the department signed off on the changes. Letter from Assistant Attorney General Deval Patrick, U.S. Department of Justice, to Director James Drennan, Administrative Office of the Courts, May 30, 1995, available at <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/NC-1530.pdf>; Letter from Assistant Attorney General Deval Patrick, U.S. Department of Justice, to Director Jack Cozort, Administrative Office of the Courts, January 11, 1996.
- 105 U.S. Census Bureau, "QuickFacts: Guilford County, North Carolina," available at <https://www.census.gov/quickfacts/fact/table/guilfordcountynorthcarolina/PST045216>; U.S. Census Bureau, "QuickFacts: Cumberland County, North Carolina," available at <https://www.census.gov/quickfacts/fact/table/cumberlandcountynorthcarolina/PST045216>.
- 106 Jarvis and Blythe, "GOP Wants New Election Maps for NC Judges and Prosecutors."
- 107 Cash Michaels, "Activists Warn About North Carolina Judicial Redistricting Scheme," *Winston-Salem Chronicle*, October 12, 2017, available at <http://www.wschronicle.com/2017/10/activists-warn-north-carolina-judicial-redistricting-scheme/>.
- 108 Jarvis and Blythe, "GOP Wants New Election Maps for NC Judges and Prosecutors."
- 109 Sue Sturgis, "Louisiana Hires Controversial Law Firm to Block Fox for Racist Judicial Elections," Facing South, October 20, 2017, available at <https://www.facingsouth.org/2017/10/louisiana-hires-controversial-law-firm-block-fix-racist-judicial-elections>; Michele Jawando and Allie Anderson, "Racial and Gender Diversity Sorely Lacking in America's Courts," Center for American Progress, September 15, 2016, available at <https://www.americanprogress.org/issues/courts/news/2016/09/15/144287/racial-and-gender-diversity-sorely-lacking-in-americas-courts/>.
- 110 Ibid.
- 111 Gabriel, "In North Carolina, Republicans Stung by Court Rulings Aim to Change the Judges."
- 112 Ibid.
- 113 Douglas Keith and Laila Robbins, "Legislative Appointments for Judges: Lessons from South Carolina, Virginia, and Rhode Island" (New York: Brennan Center for Justice, 2017), available at https://www.brennancenter.org/sites/default/files/analysis/North_Carolina.pdf.
- 114 George and Yoon, "Gavel Gap."
- 115 Ibid.
- 116 Ibid.
- 117 Keith and Robbins, "Legislative Appointments for Judges."
- 118 Ibid.
- 119 Ibid.
- 120 Rob Schofield, "Lack of Diversity Continues to Plague the North Carolina General Assembly," NC Policy Watch, January 9, 2015, available at <http://pulse.ncpolicywatch.org/2015/01/09/lack-of-diversity-continues-to-plague-general-assembly/#sthash.WEU0nIU.dpbs>.
- 121 George and Yoon, "Gavel Gap."
- 122 Associated Press, "Trump Choosing White Men as Judges, Highest Rate in Decades," November 13, 2017, available at <http://www.nydailynews.com/news/wires/news/national/trump-choosing-white-men-judges-highest-rate-decades-article-1.3629843>; See also, NAACP Legal Defense Fund "NAACP Legal Defense Expresses Concern about Trump Administration's Nominees to Federal Bench," Press release, May 8, 2017, available at <http://www.naacpldf.org/press-release/naacp-legal-defense-fund-expresses-concern-about-trump-administrations-nominees-federa>; Leslie Proll, "White Supremacy Has No Place on the Federal Bench," NAACP Legal Defense Fund, Medium, October 11, 2017, available at https://medium.com/@NAACP_LDF/white-supremacy-has-no-place-on-the-federal-bench-d6bdc14159d7.
- 123 Anne Blythe, "Cooper Would Have lost This Court Battle in Power Struggle with NC Lawmakers," *The News & Observer*, October 31, 2017, available at <http://www.newsobserver.com/news/politics-government/state-politics/article181938276.html>; Associated Press, "Top NC Court Takes Up Lawmakers Stripping Governor's Powers, Redistricting."
- 124 Ryan J. Reilly, "Trump's Controversial Pick for DOJ Civil Rights Chief Appears Headed to Confirmation," *Huffington Post*, September 6, 2017, available at https://www.huffingtonpost.com/entry/eric-dreiband-doj-civil-rights-trump_us_59b0230be4b0b5e53102fb4a; Ron Klain, "The One Area Where Trump has been Wildly Successful," *The Washington Post*, July 19, 2017, available at https://www.washingtonpost.com/opinions/the-one-area-where-trump-has-been-wildly-successful/2017/07/19/56c5c7ee-6be7-11e7-b9e2-2056e768a7e5_story.html?utm_term=.c0b2ff4095a8.
- 125 Joshua Douglas, "State Constitutions: The Next Frontier in Voting Rights Protection," ACS Blog, August 6, 2015, available at <https://www.acslaw.org/acsblog/state-constitutions-the-next-frontier-in-voting-rights-protection>.
- 126 Charlie Savage, "A Judge's View of Judging is on the Record," *The New York Times*, May 14, 2009, available at <http://www.nytimes.com/2009/05/15/us/15judge.html>.
- 127 Brittany Packnett, "Sonia Sotomayor Just Told Us All the Truth About Illegal Traffic Stops," *The Guardian*, June 20, 2016, available at <https://www.theguardian.com/commentisfree/2016/jun/20/sonia-sotomayor-truth-illegal-traffic-stops-supreme-court>; Jennifer Peltz, "Sotomayor: US High Court Needs More Diversity, in Many Ways," Associated Press, April 9, 2016, available at <https://apnews.com/827d6da59fe246b9829cef16ab117f78/sotomayor-us-high-court-needs-more-diversity-many-ways>.
- 128 *Utah v. Streiff*, 136 S.Ct. 2056 (2016).
- 129 Weiser and Weiner, "Democracy in North Carolina Could Disappear"; Kromm, "Gerrymandering is Only the Latest Attack on North Carolina's Courts."

130 Boughton, "Former GOP Supreme Court Justice: 2-year Terms Amendment Continued Effort to 'Intimidate Judiciary.'"

131 Rep. Marcia Morey, "Legislative Leaders Making Power-Grab to Control N.C. Courts," WRAL, October 21, 2017, available at <http://www.wral.com/marcia-morey-legislative-leaders-making-power-grab-to-control-n-c-courts/17032573/>.