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2006

Court Review: Volume 43, Issue 2 – The Legislatures, the Ballot Boxes, and the Courts

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Raftery, William, "Court Review: Volume 43, Issue 2 – The Legislatures, the Ballot Boxes, and the Courts" (2006). *Court Review: The Journal of the American Judges Association*. 251.
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The Legislatures, the Ballot Boxes, and the Courts

William E. Raftery

As a separation-of-powers matter, the nation's framers and their state counterparts placed some distance between the legislative and judiciary branches so that each might better serve the people. Of course, the separation between the two branches has not prevented legislation impacting the courts year in and year out, much of which could reasonably be described as changes that potentially infringe on the independence, fairness, and impartiality of the courts. (I term these "attacks on the courts.") Moreover, the issue has been compounded lately by a series of efforts in initiative and referendum states to achieve by the ballot box what could not be accomplished through the legislature. Three areas in particular, those dealing with impeachment, judicial accountability, and court stripping, appear to be parts of larger national trends that will in all probability be replicated (in whole or in part) in other states in the future. This article describes recent legislative and citizen attacks on the courts and argues that there needs to be judicial awareness of and responses to potential encroachments on judicial independence. While impeachment and judicial accountability/personal liability for judges have found minimal support and success, altering the jurisdiction of the courts is proving to be robust and successful.

I. IMPEACHMENT AND REMOVAL

The first attack is via the legislative impeachment process. The nation's framers wisely subjected judges to removal *for cause* through impeachment. Historically, this has been a rarely used power. Importantly, judicial *opinions and decisions* have not resulted in impeachment, even when controversial court decisions raised the possibility in legislatures. Since 1785, there have been only 32 investigations, involving 36 state judges, in contemplation of impeachment. In only 10 cases did the legislature actually impeach, convict, and remove a judge: In none of these cases was the impeachment based on political or policy disagreements with the judge's decision.¹ Rather, the impeachments that referred to a judge's order or ruling were done so as a secondary matter; a bribe or other impropriety was the center of the legislative concern.²

In the past five years, however, legislatures have acted—or threatened to act—solely on a judge's decision.³ In fact, rhetoric about the removal of judges based solely on their case decisions has become increasingly common. None of these instances in the state courts has resulted in an actual impeachment and removal, but it is startling that the threats have materialized at all. Six state actions are exemplary:

- In 2004, Colorado Judge John W. Coughlin was under impeachment threat for his order in a custody case. Portions of the order were reproduced in the bill of impeachment. The specific case citation appeared in the house resolution, which sought to impeach the judge for malfeasance.⁴ It died in committee.
- In 2005, a bill was introduced in the Tennessee Senate that would have made any decision that "deviates from rule of law" or precedent presumptively an act of judicial misconduct unless the judge could "present clear and convincing evidence that, before ruling, the adjudicator competently and thoroughly researched the law on the question controlling [and] cite uncontradicted and controlling precedent...that the question was one of first impression."⁵ This bill never made it out of committee.
- In 2006, resolutions seeking the impeachment of the entire New Jersey Supreme Court for their ruling on same-sex marriage were introduced and are currently pending before the assembly judiciary committee.⁶
- In 2006, New Hampshire's legislature considered the removal of a sitting judge for a decision made years prior. Superior Court Justice Kenneth R. McHugh had ruled a plaintiff's pleadings in a divorce case were frivolous.⁷ The bill was unanimously rejected by a joint house-senate committee.
- In 2006, The Ohio House of Representatives considered removing Judge John Connor for his sentencing of a sex offender. The speaker of the house issued a press release saying the house was "reviewing the processes by which Judge Connor may be removed from the bench."⁸ Those plans, however, were shelved a few days later.

Footnotes

1. See generally John O. Haley, *The Civil, Criminal and Disciplinary Liability of Judges*, 54 AM. J. COMP. L. 281 (2006). See also Connecticut General Assembly, Office of Legislative Research, *Impeachment of State Officials*. February 9, 2004, <http://www.cga.ct.gov/2004/rpt/2004-R-0184.htm>.
2. Haley, *supra* note 1.
3. See *infra* Section II.
4. H.R. 1007, 64th General Assembly, Second Regular Session. (Colo. 2004).
5. S.B. 3522, 104th General Assembly, Second Session (Tenn. 2006).
6. A.R. 217 (Justice Albin), 212th Legislature, Second Session. (N.J. 2007); A.R. 218 (Justice LaVecchia), 212th Legislature, Second

Session (N.J. 2007); A.R. 219 (Justice Rivera-Soto), 212th Legislature, Second Session (N.J. 2007); A.R. 220 (Justice Wallace), 212th Legislature, Second Session (N.J. 2007); A.R. 221 (Chief Justice Poritz), 212th Legislature, Second Session (N.J. 2007); A.R. 222 (Justice Zazzali), 212th Legislature, Second Session (N.J. 2007); A.R. 223 (Justice Long), 212th Legislature, Second Session (N.J. 2007).

New Jersey operates on a session cycle (in this instance, 2006/2007). All 2006 bills are still pending in 2007, without the need for reintroduction.

7. H.A. 1, 159th Session, Second Year. (N.H. 2006).
8. Editorial, *Judge Connor Must Go—Now!*, DAYTON DAILY NEWS, Mar. 19, 2006, at B6.

- In 2006, the Vermont House called upon District Judge Edward Cashman to resign for the relatively lenient sentence he handed down in a child molestation case.⁹ When Judge Cashman later accepted the prosecution's motion for reconsideration and increased the sentence, the house's resolution was extensively amended to remove direct references to Judge Cashman or any calls for his resignation. The resolution also included a provision that the general assembly "recognizes the importance of an independent judiciary to the rule of law in our constitutional system of government." The joint resolution passed the house and was forwarded to the senate where it died.

II. JUDICIAL ACCOUNTABILITY

Citizen-led initiatives and referenda account for a second set of attacks that go after judges not in their official capacity, as in impeachment, but personally. These are in the form of "judicial accountability" efforts, and they are frequently focused on forcing judges to pay out of their own pockets for civil judgments that would stem from claims raised by litigants who would have a cause of action against a judge for misconduct. An example is the ongoing effort being mounted by Coloradan Rick Stanley. Stanley and others from the "Liberty Initiatives Group" are proposing a ballot initiative for 2008, the "Colorado Judicial Accountability Act." The act would amend the Colorado Constitution and impose "personal liability" on judges, limit indemnification of judges for damages they would be liable for, and remove judges from office after three instances of misconduct.¹⁰

Before 2006, the phrase "judicial accountability" was ill-defined or simply not defined at all. A Lexis/Nexis search of "US Newspapers and Wires" found 34 uses of the phrase "judicial accountability" in 2001. By 2004, the number jumped to 90. It increased to 168 in 2006, based largely on events in South Dakota (described below).

9. J.H.R. 52, Adjourned Session of the 2005-2006 Biennium. (Vt. 2006)
10. See <http://home.earthlink.net/~19ranger57/initiative2.pdf>. Stanley, a former Libertarian candidate running for the 2002 Senate seat in Colorado, was convicted in 2004 for sending two judges a "notice of order" demanding that they reverse his conviction for a weapons violation or face arrest by Stanley's Mutual Defense Pact Militia followed by a trial for treason. The conviction was recently affirmed by the Colorado Court of Appeals. *People v. Stanley*, ___P3d___, 2007 WL 1017674 (Colo.App. Apr. 5, 2007).
11. Full text of Constitutional Amendment E, An Amendment to Article VI of the South Dakota Constitution, Relating to Judicial Decisions, is the South Dakota Secretary of State's website, http://www.sdsos.gov/electionsvoteregistration/upcomingelection_2006BQExplanations.shtm.
12. Judicial Accountability Initiative Law (JAIL) "a single-issue national grassroots organization designed to end the rampant and pervasive judicial corruption in the legal system of the United States." See <http://www.jail4judges.org/>. Stegmeier is a member of the organization, and the South Dakota initiative followed the JAIL4Judges standard approach for reform.
13. See, e.g., Bob Ellis, *Zogby Poll: South Dakota Amendment E (JAIL) Support at 67%*. DAKOTA VOICE, Sept. 21, 2006, http://www.dakotavoice.com/200609/20060921_3.html.

Rick Stanley's attempts at "judicial accountability" may be exemplary; however, so far they have been mostly ineffectual. South Dakota's Bill Stegmeier's proposed Amendment E, the Judicial Accountability Initiative Law of 2006¹¹ (popularly known as the JAIL4Judges¹² Amendment), on the other hand, raised more concerns as there seemed to be at least a chance for enactment.¹³ The amendment was designed to create a Special Grand Jury that could subject anyone "shielded by judicial immunity" to civil suit or criminal prosecution for "conspiracy." Although the initiative lost 89% to 11% in November 2006, the loss only emboldened the JAIL4Judges movement. Stegmeier wrote in the aftermath of the initiative's defeat:

And next time, thanks to the lessons we have learned, our new Judicial Accountability Amendment will be bulletproof. And for good measure, we will also put on the ballot an amendment to outlaw computerized vote counting. And just because they have peeved us off, how about an amendment to require judges to inform the jury it has the right to judge the law as well as the accused's guilt or innocence? I think so!¹⁴

Stegmeier is a board member of the Liberty Initiatives Group which, as previously noted, is pushing for a JAIL-like initiative in Colorado in 2008.¹⁵ Florida's JAIL4Judges branch has worked with their national leadership to modify certain portions of what appeared on the ballot in South Dakota¹⁶ and are making their attempt to get onto the 2008 ballot. Their first act was to register as a nonprofit corporation titled "The Florida Bar Association, Inc."¹⁷ Next, they commenced an action

Citizen-led initiatives and referenda account for a second set of attacks that go after judges . . . personally.

14. David Kranz, *Teaching Long a Lesson? J.A.I.L. Amendment Proponents Blame Official for Its Failure*, ARGUS LEADER, Feb. 5, 2007, available from http://www.tulanelink.com/jail/argusleader_07b.htm.
15. See Gene Chapman, *My Child is Born*, LIBERTY INITIATIVES GROUP, Dec. 9, 2006, <http://libertyinitiativesgroup.blogspot.com/2006/12/my-child-is-born.html>; and *Colorado Judicial Accountability Act Passed in LIG Meeting* (Jan. 16, 2007) <http://libertyinitiativesgroup.blogspot.com/2007/01/colorado-judicial-accountability-act.html>
16. A version of the new initiative has been released online. See e-mail reproduced as part of a group discussion post dated February 13, 2007 from national JAILer in Chief Ronald Branson and *Branson to Hurt: "We Need A Special Grand Jury"* http://groups.google.com/group/Lawmen/browse_thread/thread/cc4a7608932bfa6b/e77e6880f6e488e5?hl=en#e77e6880f6e488e5.
17. Articles of Incorporation (Sept. 9, 2005). On file with the Florida Secretary of State http://www.sunbiz.org/scripts/cordet.exe?action= DETFIL&inq_doc_number=N05000009115&inq_came_from=NAMFWD&cor_web_names_seq_number=0000&names_name_ind=N&names_cor_number=&names_name_seq=&names_name_ind=&names_comp_name=FLORIDABAR&names_filing_type=

[C]ourt-stripping efforts have sought to simply remove from the courts jurisdiction over a variety of cases.

against “the Florida Bar” before that state’s supreme court demanding “the Florida Bar” give space in its publications to the JAILers as well as a motion to disqualify all sitting justices.¹⁸ The supreme court rejected their petition and a motion for reconsideration is pending. In Nevada, the former head of that state’s JAIL4Judges chapter and current leader of the state’s third-largest political party has vowed to use that state’s existing law that permits grand juries to be convened by gathering of signatures to proceed against any and every judge he can. Moreover, he intends on pushing to push legislation or initiatives to lower the number of signatures required for such grand juries.¹⁹

JAIL4Judges is not the only group seeking to make judicial officers subject to personal civil suits and imprisonment for their decisions.

In Arizona²⁰ and California,²¹ JAIL4Judges-like initiatives have been submitted for signature gathering by others alleging judicial conspiracies against them.

- North Dakota’s proposed Family Law Reform Initiative²² (FLRI) would subject all judges “who knowingly promote[] false or frivolous claims of domestic abuse” to automatic disbarment. In visitation/support cases, courts that “deliberately refuse” to enforce orders to the liking of one of the parties “shall enjoy no immunity from either prosecution or civil suit.”²³ In addition, the initiative would retroactively reopen all domestic cases involving divorce, families, or children decided in the last 10 years and require they be retried before juries. Backers of the original version of FLRI were able to gather only 4,000 of the over 12,000 signatures needed within the one-year deadline.²⁴ However, proponents have begun modifications to the initiative’s language and vow to gather signatures for the 2008 ballot.²⁵

While the above efforts have been prompted by disgruntled litigants using citizen-legislation avenues, legislatures also have been examining whether to make judges liable for personal expenses based on their decisions.

- Connecticut’s legislature²⁶ copied portions of the JAIL4Judges ballot language concerning “judicial immunity” and went even further, creating an inspector general for the judiciary with the power to convene a grand jury at any time against any judge. The IG could personally “grant the writ of habeas corpus in the same manner as the Supreme and District courts” and could require judges “state an authority of law for which the judgment should be based, in particular order(s) for denial or dismissal if no written finding was available.”²⁷ The IG’s grand jury “shall be granted powers of jury nullification and have the right to take it upon themselves to judge the law as applied ethically and constitutionally by a judge as well as the facts in controversy surrounding a judge’s decision.”²⁸
- In 2005, Indiana’s House considered a bill that would have changed the presumptions regarding joint legal and physical custody and other similar issues.²⁹ The proposed legislation would have impacted the judiciary significantly: Any judge who “fails to comply...commits official misconduct and: (1) is not entitled to judicial immunity; and (2) may not be represented at the state’s expense in an action against the judge for official misconduct.”³⁰
- Also in 2005, West Virginia’s House considered a bill³¹ providing that if a municipal trial court judge’s decision is overturned on appeal, the judge would be “personally liable to the defendant for one hundred dollars...and shall in all events be paid from the personal funds of that judge. The judge may not be reimbursed by the municipality...”³²

III. COURT STRIPPING

The third attack is against the judicial officer not as a person or as judge, but as a part of the judicial branch as a whole. To that end, court-stripping efforts have sought to simply remove from the courts jurisdiction over a variety of cases. Here, the attack on the judiciary is an institutional one; although individual judges or judicial decisions are sometimes referenced, these are often federal cases or cases from states other than the jurisdiction considering stripping the courts of jurisdiction. Court stripping may prove to be the most successful of the three arenas of judicial attacks.

Numerous federal efforts to remove jurisdiction from the

18. Press Release, Florida J.A.I.L. for Judges, *Florida J.A.I.L. for Judges Files Suit Against the Florida Bar to Enjoin Illegal Activity*, (Feb. 21, 2007) http://www.jail4judges.org/PressReleases/PR_2007-02-21.htm.
19. Christopher Hansen, *An Interview and Answers to All Those Questions*, INDEPENDENT AMERICAN PARTY OF NEVADA (blog), Sept. 19, 2006, <http://www.independentamerican.org/blog.php?blog=208>.
20. Arizona Secretary of State, C-02-2008, *Judicial Reform*, <http://www.azsos.gov/election/2008/General/Initiatives.htm> (copy of text obtained from the Arizona Secretary of State on file with author).
21. See *Proposed Public Agency Accountability Ballot*, http://ag.ca.gov/cms_pdfs/initiatives/2007-01-03_06-0036_A1S.pdf
22. See <http://www.flri.net/>.

23. See <http://www.nd.gov/sos/electvote/elections/docs/petition4-11-2006.pdf>.
24. Kyle Johnson, *Family Initiatives*, GRAND FORKS HERALD, July 23, 2006, at 1.
25. Dale Wetzel, *Time Runs Out for ND Family Law Ballot Measure*, ASSOCIATED PRESS, Apr. 11, 2007.
26. H.B. 6289, 2005-2006 Meeting, 2006 Session (Ct. 2006).
27. *Id.* at Section 3.
28. *Id.* as Section 5.
29. H.B 1512, 114th General Assembly, First Session (Ind. 2005).
30. *Id.* at Sections 3 and 10.
31. H.B. 3140, 79th Legislature, First Session. (W. Va. 2005).
32. *Id.* at Section 8-34-5.

courts pertaining to matters such as the Pledge of Allegiance and the phrase “under God,”³³ public prayer,³⁴ and the display of the Ten Commandments³⁵ have been introduced in recent years. Similar attempts to remove or alter the jurisdiction of the state courts have also been considered, some echoing or copying outright their congressional counterparts. For example, Arizona proposed to remove jurisdiction over cases where a government employee issued an “acknowledgement of God as the sovereign source of law, liberty or government.”³⁶ Senator Karen Johnson, who introduced the legislation, told local media that “[W]e’re supposed to have religion in everything—the opportunity to have religion in everything. I want religion in government, I want my government to have a faith-based perspective.”³⁷ The bill was withdrawn.³⁸

Kentucky’s effort went further, though it too was unsuccessful. A bill was introduced to enact a constitutional amendment that would have prohibited courts from construing any provision of the state constitution to prohibit the historic display of the Ten Commandments on public property, require an increase in taxation, order the expenditure of funds by government, and a litany of other restrictions on the courts.³⁹ The provision was approved by the senate state and local government committee before being rejected by the full senate in a 16-22 vote. But the matter is not dead. In 2007, Kentucky’s House picked up where the previous effort left off.⁴⁰ In addition, the proposed bill would limit the courts’ power in Establishment Clause cases to injunctive relief and award of costs. Courts would be expressly prohibited from awarding “actual damages or attorney’s fees.”⁴¹

The efforts to remove jurisdiction have been primarily focused on cases in which courts have ordered governments to provide additional funding to schools or for other purposes.

- Indiana proposed a prohibition on the courts from issuing any order “requiring the State or a political subdivision of the State to expend money for the operation of any court of the State.”⁴² It was never voted on in committee.
- Legislation has been introduced in Kansas for the past three years that would prohibit courts from ordering funding or appropriations in general.⁴³ The 2005 version was approved

by full senate, but died without action in the house. The 2006 version was voted out of committee but ultimately rejected by the house. The 2007 version was limited only to school-funding issues.

- The Oklahoma legislature introduced a bill that would have prohibited courts from ordering any action resulting in an increase in taxes, fees, or other sources of revenue.⁴⁴ The bill passed the house 78-12 but died without any action in the senate.

Arizona proposed to remove jurisdiction over cases where a government employee issued an “acknowledgement of God as the sovereign source of law, liberty or government.”

This past year, much of the focus has been on Missouri, which like Kansas has had a multiyear effort to limit the courts’ authority. A bill was introduced in the house in 2006 that would prohibit the courts from ordering the state or local government to levy or increase a tax.⁴⁵ The legislation would also prohibit the courts from ordering how to spend, allocate, or budget fiscal resources in all cases except to compel reasonable funding of judicial operations. It was voted out of committee but died on the house floor. The 2007 legislation would have forbidden courts “to instruct or order the state or any county, city, or political subdivision thereof, or an official of the state or of any county, city, or political subdivision thereof, to levy or increase taxes” and to issue decisions “on how to spend, allocate, or budget fiscal resources in a manner inconsistent with duly enacted and effective legislation.”⁴⁶ The proponents pointed to other states, especially Kansas, for the need to remove the court’s jurisdiction over these matters thereby “Stopping Judges for [sic] Raising Taxes.”⁴⁷ The Kansas Supreme Court had previously struck down on constitutional grounds that state’s school-financing program as failing to pro-

33. *Pledge Protection Act of 2003*, H.R. 2028, 108th Congress, First Session (As Approved by House); *Pledge Protection Act of 2004*, H.R. 2028, 108th Congress, Second Session (As Approved by House); *Pledge Protection Act of 2005*, H.R. 2389, 109th Congress, First Session (As Approved by House); *Pledge Protection Act of 2007*, H.R. 699, 110th Congress, First Session (As Introduced in House).

34. *Public Prayer Protection Act of 2005* H.R. 4364, 109th Congress, First Session (As Introduced in House); *Public Prayer Protection Act of 2007* H.R. 2014, 110th Congress, First Session (As Introduced in House)

35. *Safeguarding Our Religious Liberties Act*, H.R. 4576, 109th Congress, First Session (As Introduced in House).

36. S.C.R. 1026, 48th Legislature, First Session (Ariz. 2007).

37. Howard Fischer, *Senator Wants God Out of Courts*, ARIZONA STAR, Jan. 31, 2007, at B5.

38. S.C.R. 1026, 48th Legislature, First Session (Ariz. 2007).

39. S.B. 236, 2005-2006 Legislature, 2006 Regular Session (KY 2005).

40. H.B. 19, 2007-2008 Legislature, 2007 Session (KY 2006).

41. *Id.* at Section 2.

42. S.J.R. 12, 115th General Assembly, First Session (Ind. 2007).

43. S.C.R. 1603A, 2005 Special Session (KS 2005); H.C.R. 5032, 2006 Regular Session (KS 2006); .S.C.R 1601, 2006 Regular Session (KS 2006).

44. H.J.R 106, 2006 Regular Session, (Okla. 2006).

45. H.J.R. 31, 93rd General Assembly, Second Session (MO 2006).

46. H.J.R 1, 94th General Assembly, First Session (MO 2007).

47. Speaker of the Missouri house Rod Jetton elaborated on the need for the legislation, citing to the activities in other states, through his newsletter, CAPITOL REPORTS. See *Stopping Judges from Raising Taxes (Part I)*, Apr. 4, 2003 and *Stopping Judges for Raising Taxes (Part II)*, Apr. 13, 2007, both <http://www.rodjetton.org/reports>.

Citizen-led efforts are a reflection of political dissatisfaction with the government that is now targeting the judiciary.

vide sufficient funds to meet the requirement.⁴⁸ Missouri was facing a similar lawsuit. However, even Kansas's proposed legislation did not go this far and dealt only with ordering appropriations.⁴⁹

Missouri's HJR 1 made it through the house with the vocal support of that state's

governor. In an interesting piece of timing, the house voted on the bill the same day testimony concluded only a few blocks away in a court case involving school financing. A senate committee modified the language but it failed to receive approval by the full senate before the adjournment of the legislature.

IV. WHY LEGISLATIVE ATTACKS ON THE COURTS ARE INCREASING AND SHOULD BE OF CONCERN

Citizen-led efforts are a reflection of political dissatisfaction with the government that is now targeting the judiciary. They may be of concern, but they do not have the institutional backing that legislative efforts have. They are of concern, even though none of the three categories of attacks on the judiciary have gotten as far as passage by a full legislature to date. Why then are bills continuing to be introduced by legislators? There are several factors at play.

First, they serve as vehicles for state legislators to voice displeasure with specific decisions and judges. The impeachment efforts are clear indicators of this. However, there are more subtle ways in which legislatures have sought to accomplish the same goal—strategically based budget cuts or personnel decisions come to mind. But these recent efforts are public and loud. Knowing that their likelihood for success is minimal or nonexistent, legislators get a message across without actually having to push the matter too hard.

The efforts by legislatures voice displeasure with the state's judiciary in general or are tied into displeasure with the federal courts, with the state's court system serving as punching bag by proxy. Kentucky's and Missouri's court-stripping legislation proposals are cases in point. These are not in reaction to any particular decision rendered by their states' courts. Instead, these are responses to federal cases or decisions rendered in

other states. "Judges" are lumped together nationally, with local reactions the result.

Finally, some of these efforts are truly intended to hurt judges, personally or professionally, or the judiciary as a whole. We may be past the point during the 1960s when "Impeach Earl Warren" was on billboards but never made it into articles of impeachment on the House floor, but in 1997 then-House Majority Whip Tom Delay (R-Texas) threatened that on the federal judiciary level, "the articles of impeachment are being written right now..."⁵⁰ Yet despite the Republican Whip having his party as majority in both the U.S. House and Senate, the impeachment efforts never materialized.

In the state, however, there seems to be great persistence. We are starting to see efforts against state judges move from ideas to actual legislation and in so doing moved a step closer toward actual passage. Of the judges impeached or investigated for possible impeachment from 1991 to 2004, none were pursued based solely on their decisions. Colorado's 2004⁵¹ effort marked a change on that score. Court stripping is moving beyond one-chamber bills and into the realm of legislative possibility. Will we see the introduction of more articles of impeachment or direct efforts against particular judges for specific decisions in the future? It appears very likely.

V. WHAT CAN BE DONE

What are the messages to take away from this when it comes to the legislature and judiciary? Let us return back to South Dakota. The state legislature unanimously passed a resolution in support of their state's judiciary and against the idea of subjecting judges to imprisonment for their decisions.⁵² Both political parties put opposition to J.A.I.L. 4 Judges (Amendment E in South Dakota) into their state party platforms or passed resolutions to that effect. More than 200 city councils, county commissions and school boards passed resolutions against Amendment E. Why? In part, it was because the language of the amendment included councils, boards, and commissions, as they are protected by "judicial immunity" when rendering certain decisions. In part, it was because the proponents themselves admitted several times to wishing to attack not just judges, but also the "New World Order" and the Federal Reserve,⁵³ the Uniform Commercial Code,⁵⁴ the use of Social Security numbers as the Mark of the Beast in Revelations,⁵⁵ etc. But those local resolutions also came about as people began to

48. Montoy v. Kansas, 279 Kan. 817, 112 P3d 923 (2005).

49. Both pieces of legislation used the same language: "The executive and judicial branches shall have no authority to direct the legislative branch to make any appropriation of money or to redirect the expenditure of funds appropriated by law, except as the legislative branch may provide by law or as may be required by the Constitution of the United States. Any existing order directing the legislative branch to make an appropriation of money shall be unenforceable as of the date this provision is adopted."

50. Ralph Z. Hallow, *Republicans out to impeach 'activist' jurists*, THE WASHINGTON TIMES, Mar. 12, 1997, at 1.

51. See *supra* note 4 and accompanying text.

52. H.C.R. 1004, Eighty-First Session, (S.D. 2006).

53. Ron Branson, *Investing In America*, J.A.I.L. NEWS JOURNAL, June 8,

2005, http://www.jail4judges.org/JNJ_Library/2005/2005-06-08.html.

54. "Yes, Loma, we */do/* "hope that all of you have studied history and understand that we are being ruled under UCC corporate law" *_J.A.I.L._* is the means by which the People will carry out their duty to alter or reform government today, The People will settle for nothing less than a Constitutional Republic, a republican form of government — *_NOT*_ A DEMOCRACY!" E-mail from Barbie Branson, Associate National JAILer in Chief. Reprinted as "What About The Corporation?", J.A.I.L. NEWS JOURNAL, Jan. 6, 2006, http://jail4judges.org/JNJ_Library/2006/2006-01-07.html.

55. Ron Branson, *When the Courts Don't Work, Neither Do Governments Work*, J.A.I.L. NEWS JOURNAL, Feb. 19, 2004, http://www.jail4judges.org/JNJ_Library/2004/2004-02-11A.html.

realize that regardless of how they might feel about a particular decision in their case or even cases in other states with a national impact, there was something wrong with the idea of making a judge pay out of his or her own pocket or be thrown in prison for an unpopular decision.

The vast majority of bills previously mentioned died in committee with no action taken. There is at least *for the time being* a resistance to the notion of personally harming judges, or removing judges, or harming the judiciary for doing the job the people expect of them, namely, to adjudicate matters. At some basic level, it smacks of either a threat to our system of government or is too much a parallel to those people who actually personally harm others in a physical way, such as in those cases where judges and other court personnel have been killed.

Nevertheless, the recent electoral defeats cannot be seen as the end of these efforts. JAIL4Judges started in 1996 in a California garage, spread across the internet, and landed on the South Dakota ballot in 2006. Actual legislation to impeach judges for their decisions would have been unheard of five years ago, yet today numerous bills and resolutions have been introduced. Hobbled courts' ability to hear cases is closing in on reality. To those states fielding these issues, the need to recognize these efforts as part of an interwoven national trend is essential. To those in states that have not yet had to confront these issues, these efforts may be to serve as a warning. With

an internet- and blog-connected society and a series of pundits who have made careers by attacking judges in general and some individual judges in particular, we will not have to wait ten more years to see similar efforts arriving on the doorstep of other states either through the legislative process or through initiatives and referenda.



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