



**State courts are
the new battleground
for our rights and
our democracy.**

★★★★★★★★★
State courts
decide over 95%
of all cases in
the United States.

democracy
if we can
keep it

★ ★ ★ ★ ★ ★ ★ ★ ★ ★

30 states have some form of constitutional requirement that elections be “free”; 18 of them also require elections be either “equal” or “open.” Such requirements can be used as the basis for state court rulings connected to elections or redistricting.

For more information visit:
National Conference on State Legislatures, Free and Equal Election Clauses in State Constitutions

One of the first steps in forming a kleptocracy and creating autocratic rule is to neutralize or control the courts.

By doing this, those in charge have the power to both define justice and determine rights. While historical examples abound (Nazi Germany is one), countries outside the United States have started destroying the independence of their courts in recent years. In Turkey, judges were fired or jailed and replaced by inexperienced loyalists, while in Hungary the government has “systematically disarmed” the judiciary and, in a move similar to what occurred in Turkey, well-qualified judges left—either for “personal reasons” or because government changed the mandatory retirement age, allowing the autocratic government to control the hiring and promotion of judges.

What happened in those countries—and others—is poised to happen here.

Special and political interests are working in each state to destroy judicial independence. Like in Turkey and Hungary, they are working to oust qualified judges and replace them with cronies.

Without the relentless work of community organizers who grasp the need to have independent courts and how those courts connect to our rights and our democracy, special interests in America could have successfully litigated the 2020 election to undermine the people’s vote and reverse the results. In 2021, those actors have only amplified their attacks against state courts and are now attempting through legislative maneuvering to nullify Americans’ sacred right to vote. The only effective response is a well-funded and highly organized collaborative effort to shore up states against attacks on the independence of the courts and protect and advance systemic reforms.

U.S. courts are being undermined with political sabotage.

Had state courts ruled differently in 2020, we would be working within a dramatically altered national context and facing the sobering reality that our systems of checks and balances had failed. Instead, the courts stood to uphold democracy and our collective national interests. If current efforts to undermine and erode their authority succeed from here, we may not be able to rely on their fundamental safeguarding of American democracy.

In 2021, a record number of bills moved in states that would destroy the independence of the third branch of government. In a Washington Post Op-Ed, [Lawmakers are targeting courts that could shoot down voter suppression laws: They want to make voting harder—and make it harder for voters to fight back](#) (May 19, 2021), the Brennan Center for Justice noted [at least 93 bills in 26 states](#) that would limit courts' power or would inject politics into state courts. These attacks echo what happened in other countries and include:

- Creating entirely new courts and allowing governors to handpick the new judges.
- “Judge shopping” by gerrymandering judges off the bench.
- Filing bills to impeach justices because of decisions connected to redistricting or the 2020 election.
- Reducing the authority of courts and handing that authority to state legislatures and governors.

As the list of attacks continues to grow and evolve, there is one common thread: encouraged by special interests, state legislatures are working to **consolidate power and reduce the courts' authority**, destroying the separation of powers. They are not doing it in isolation or randomly. Instead, they are quietly testing their work in a handful of states outside those typically funded by progressive philanthropy. They are adeptly applying lessons learned as they move on to the next state.

By 2024, they could capture enough courts to change the outcome of future presidential elections and control our democracy. It won't happen like a light switch, with a sudden reveal in 2024. We expect captured courts before the 2022 elections, which could impact litigation connected to gubernatorial and legislative elections.

★ ★ ★ ★ ★ ★ ★ ★ ★ ★

The Brennan Center for Justice—a nonpartisan law and policy institute—found that in 2020, lawmakers in 17 states had introduced nearly 50 bills that would “diminish the role or independence of state courts.”

Already this year, nearly twice as many bills have been introduced in 26 states.

We're pitted against powerful special interests with deep pockets.

As we continue to contest these well-funded and often overlooked spaces, the Piper Fund has been assessing field capacity to push back against these well-planned attacks. While our grantees have been successful on these battlefields, their impact continues to be hampered by a lack of resources as they face well-funded special interest groups like the oil and gas industry, pro-life groups, and others with deep pockets.

The scarcity of resources for judicial independence advocates stands in stark contrast to the abundance of their well-funded opposition. While judicial independence groups often survive on project budgets of \$50,000 or less – without dedicated full-time staff – to serve an entire state, their opponents typically have budgets in the millions!¹ Those on the front line of protecting state courts often operate without dedicated staff, technology, communications tools, and other critical supports. Piper's judicial independence grantees revealed, in a recent survey, these resources would be a game-changer for them. The responses, which ranged from relatively inexpensive costs such as a database, to more significant investments like hiring dedicated full-time staff, indicate the need for deeper investment in state-level infrastructure.

In contrast, opponents of judicial independence approach the issue with a financially secure multi-year strategy. [A report on the leaked emails](#) from the Bradley Foundation – which has worked to create state networks to advance its agenda including dismantling judicial independence – highlights some of these strategies. They include opposition research into progressive groups and funding multiple groups in a state such as think tanks, bill-writing groups, and advocacy groups. None of this is in place for those seeking to defend judicial independence, putting them at a significant disadvantage and making it nearly impossible to advance proactive reform.

¹ [Conquering the Courts: The Religious Right's Fight to Rig the Rule and Undermine Judicial Independence](#) provides details regarding the organizational budgets of some of the groups behind attacks.

★ ★ ★ ★ ★ ★ ★ ★ ★ ★

Attempts to delegitimize and weaken the courts cannot be underestimated, nor ignored.

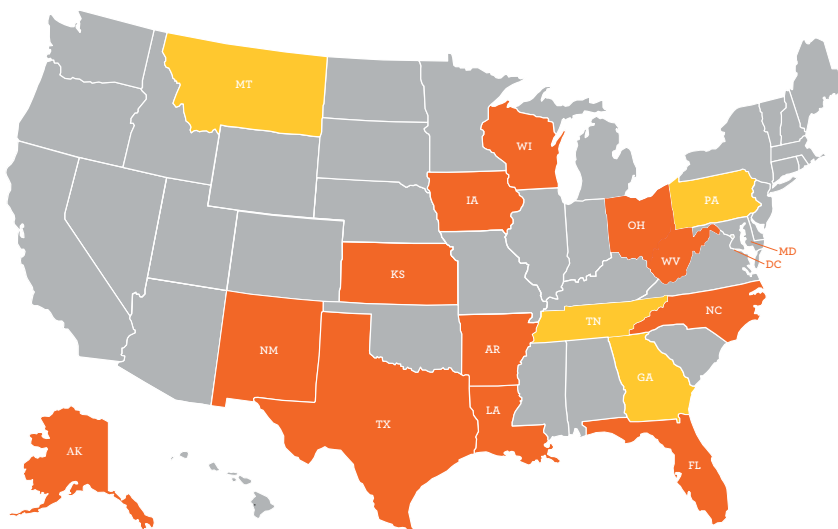
That's why Piper Fund is uniting individual donors and foundations interested in helping to diminish the unscrupulous influence of corporate and special-interest money on our political and judicial system —all at the peril of our constitutional rights.

The Piper Fund is the only donor collaborative that focuses on judicial independence.

The Piper Fund, an initiative of the Proteus Fund, works to unite individual donors and foundations to defend democratic institutions, protect the right to protest, and diminish the influence of corporate and special interest money on our political and judicial systems. Piper fosters community-driven reforms that will increase participation of historically disenfranchised communities, build community power, and protects fundamental rights for all individuals. Piper has been on the forefront of the fight for judicial independence since 2012. It is the first and only national donor collaborative dedicated to judicial independence; over the past 12 months we have supported advocates in 15 states who are relentlessly working to protect our rights and our democracy.

Judicial independence is not about protecting courts—it’s about protecting rights, including women’s rights, voting rights, and environmental justice.

Judicial Independence Grantmaking 2020-2021



Piper Fund and Piper Action Fund grants

■ Annual grants ■ Rapid response grants

★ ★ ★ ★ ★ ★ ★ ★ ★ ★

“These are massive victories made possible by Piper, which had the foresight to fund our work early to build the coalition we needed to win.”

– Ryan Wright, former executive director of the Kansas Values Institute

Determined to defend fair courts, the coalition, fought Kansas legislators who voted more than 55 times in two years to attack the courts. Wright and his allies led the defense of state courts, despite relentless attacks. The courts have been protected from political pressure and have ruled in support of women’s rights and appropriate funding of schools.

Help us implement a bold strategy to reverse the tide.

★ ★ ★ ★ ★ ★ ★ ★ ★ ★

“The funding from Piper was helpful, but it was really secondary to the support they offered. From the invitations I received to meet with different groups to introductions to other funders and communications consultants like ReThink Media, to the new partner I’ve connected with in Wisconsin and North Carolina—Piper brought us all together and connected us around the whole judicial independence fight.”

—Kadida Kenner, former Director, Campaigns, for the Pennsylvania Budget and Policy Center.

1 Leverage game changing multi-year funding

We have an opportunity to invest now to fortify our democracy. Suppose we increase our annual investment and provide groups with enough funds to advance reform. In that case, we can achieve the goals of safeguarding separation of powers, reducing the influence of special interests on state courts, and ensuring strong judicial ethics standards. Initial investments in a small number of states could then serve as a model or a blueprint to advance reform in other states.

The Piper Fund proposes a deep investment over the next five years in five states poised to advance structural reform.

The considerations for selecting these states include:

- Potential for local and regional donors to contribute towards the effort to ensure long-term sustainability.
- Existing nonprofit infrastructure, including a coalition to take on this work. Ideally, states should have an existing judicial independence coalition, but other relevant structures including criminal justice reform and democracy coalitions could also serve as a hub for this work.
- Potential to advance reform within the next five years. One factor here is whether there are multiple paths towards reform. In addition to legislative paths, states that have the potential for an initiated state statute or initiated constitutional amendments and the potential to improve

judicial independence via court rules offer more possibilities for reform.

- Based on these criteria, the Piper Fund has identified the following states: Arkansas, Ohio, North Carolina, and Florida (a fifth state is yet to be identified). While these states may not currently have friendly legislatures, they do have strong examples of the problems with judicial independence within each of their states. Piper intends to add one more to the list and is in the process of vetting the final state.

The funding would support the specific needs in each state, but central to the work would be hiring a full-time person for one lead organization in each state and providing smaller grants to other groups that are part of the coalition.

This strategy would require an annual investment of \$1,900,000 for a total of \$9,500,000 over five years.²

2 Ensure a strong and nimble defensive game

While it is critically important to create a blueprint for advancing reform, it is just as critical to prevent courts from falling. We anticipate that in the next four years, at least six³ states will have ballot questions that, if passed by voters, would provide more power to state legislatures while at the same time reducing the authority of the courts. Additionally, we expect the legislative attacks to continue to grow.

While we want to push for reform, we must not let states fall. As judicial independence advocacy

groups become more successful and gain public support for reform, we anticipate the opposition will scurry to other states to attempt to overthrow their courts. Given how attacks have been evolving, if there is not a deep investment in protections, the opposition could use underfunded states as potential laboratories to experiment with methods to reduce the authority of state courts.

As such, we propose an annual investment totaling \$750,000, for a total of \$3,750,000 to support advocates in states that are most at risk of losing their courts.⁴ This investment will head off attacks while building support for reform in the future.

3 Unleash tactical information for rapid response and reform

For advocates to successfully advance protections, they need to understand the landscape of players, including potential opposition (and their financial supporters), along with strategies to neutralize or ward off attacks. While opponents of judicial independence have successfully deployed this knowledge, the field has not had the resources to employ it themselves. Given that this research sets the stage for success, it is a top priority in year one.

Estimated cost: \$250,000

4 Jumpstart research into the current state of judicial ethics and accountability

Additionally, while we have a clear understanding of reforms connected to judicial independence⁵, there is limited research on how to advance judicial accountability and ethics reforms. In one case highlighted in *The Teflon Robe*, a report with a series of stories

highlighting judicial misconduct, including:

- a judge trading sex for favorable treatment of women in his courtroom and
- a judge sentencing young men to community service at his house so he could take compromising photos of them.

Other examples that draw directly to the connections between campaign contributions and the courts include:

- judges receiving campaign contributions from a specific ankle bracelet company and sentencing people to wear ankle bracelets from that one company, and
- a lower court judge reducing a fine from a nursing home with the understanding that he would receive campaign money to run for that state's supreme court.

We know little about who is on accountability boards, including whether judges receive appropriate discipline or if whistleblower protections are in place for those who file complaints. Given that lower court judges are often part of a pipeline to become higher court judges (or even federal judges), it is vital to ensure that they behave ethically. The field lacks research regarding whether accountability boards function effectively or, as one advocate wondered, "are just a bunch of good old boys" reviewing their friends and not disciplining them appropriately if they misbehave.

Estimated cost: \$150,000

Note: Additional costs for lobbying and legislative advocacy are not reflected in this document; for information as to lobbying needs, please contact Kathy Bonnifield at Piper Action Fund, at kbonnifield@proteusaction-league.org.

² This is the total for five states; if we only focus on the four identified, the total over five years would be \$7,600,000

³ The states that will have questions on the ballot are West Virginia and Montana; other states where there appears to be a push for ballot questions that would destroy the independence of the courts include Missouri, Kansas, Tennessee, Pennsylvania, and Alaska. It appears as if the opposition may be fundraising around this or assessing the years to have the question on the ballots in specific states.

⁴ The states most likely to experience attacks include Tennessee, Iowa, Alaska, Montana, Kansas, Pennsylvania, Texas, and Missouri.

⁵ In the past, the judicial independence field primarily looked at higher state courts and nearly exclusively focused on how judges were placed on the bench (e.g. judicial public financing or gubernatorial appointment via merit selection). The focus has expanded to include improved disclosure and improved recusal.

democracy
if we can
keep it

Proteus Mission: Proteus Fund partners with foundations, advocates, and individual donors to advance democracy, human rights and peace.

Piper Vision: A healthy democracy that works for everyone

The Piper Fund, an initiative of the Proteus Fund, works to unite individual donors and foundations to defend democratic institutions, protect the right to protest, and diminish the influence of corporate and special interest money on our political and judicial systems. Piper fosters community-driven reforms that will increase participation of historically disenfranchised communities, build community power, and protects fundamental rights for all individuals.

For more information about how you can join the Piper Fund donor collaborative, contact:

Kathy Bonnifield
Senior Program Officer
kbonnifield@proteusfund.org
413-461-3472

Melissa Spatz
Director, Piper Fund
mspatz@proteusfund.org
413-461-3447

Learn more at:
www.proteusfund.org/piper/judicial-independence

The Proteus Fund is a nonprofit, tax-exempt 501 (c) (3) organization.

