



**AMERICAN COLLEGE  
OF TRIAL LAWYERS**

# **WHITE PAPER**

## **Threats to Impeach Judges for Judicial Decisions Undermine the Rule of Law\***

American College of Trial Lawyers

**Judicial Independence Committee**



AMERICAN COLLEGE  
OF TRIAL LAWYERS

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\*Links to external sources for more information about the events  
and issues discussed are included throughout this paper.

## Introduction

The United States Constitution allows for the impeachment of judicial officers for “conviction of Treason, Bribery, or other High Crimes and Misdemeanors.” Similar provisions appear in the Constitutions of [forty-nine of the fifty states](#). These provisions are a proper vehicle for punishing and deterring serious criminal or ethical misconduct, malfeasance, or nonfeasance by judicial officers. Impeachment, however, is never proper because of disagreement with a judge’s decision in a particular case. Ever since [Marbury v. Madison](#), 5 U.S. 137 (1803), it has been understood that judges have the right and the duty to interpret the Constitution and statutory law and, when necessary, declare legislative and executive acts invalid or unconstitutional. Threats of impeachment for such judicial acts have no constitutional grounding and are patently inconsistent with the rule of law.

Throughout its history, the American College of Trial Lawyers (“ACTL”) has stressed the importance to American democracy of an independent judiciary and in several white papers and statements has condemned the growing number of threats and invective made against judges.<sup>1</sup> The ACTL’s statements have underscored that any effort to diminish the independence of the decision-making process undermines a vital element of our judicial system. Regrettably, threats to judicial independence have reached a new level with calls for impeachment of judges based on disagreements with their decisions.

These recent threats of judicial impeachment are not a new tactic. Indeed, as shown below, from the earliest days of the republic, the threat of impeachment has been brandished in response to high profile cases that divide the country on political, religious, or ideological grounds. While these efforts rarely succeed except in cases of extreme judicial misconduct, no one should take comfort in that fact. The [public continues to lose confidence in the courts](#), and threats of impeachment and other disparagement of the judiciary contribute significantly to this loss of confidence.

In this paper, we survey the historical record of judicial impeachment efforts, highlight some of the recent impeachment threats, and suggest that these recent threats pose a greater challenge to the independence of the judiciary than ever before.

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<sup>1</sup> See, e.g., [Judicial Independence: A Cornerstone of Democracy Which Must Be Defended](#) (September 2006); [The Need to Promote and Defend Fair and Impartial Courts](#) (March 2019); [American College of Trial Lawyers Denounces Statements Against Judges Made by Governor Newsom and Donald Trump](#) (September 2023).

## Judicial Impeachments—the Historical Perspective

Judicial impeachments are rare and convictions or removals after impeachment are rarer still. For example, according to the [Federal Judicial Center](#), only fifteen federal judges have been impeached. Only eight were convicted. Three resigned before the impeachment proceedings concluded. The offenses that resulted in impeachment convictions involved serious ethical or criminal misconduct, for example, mental instability, intoxication, waging war against the United States, improper business relationships with litigants, perjury, bribery, and sexual assault. Impeachment of state court judges is likewise rare. According to the [Brennan Center](#), only two state court judges were impeached in the last twenty-five years, and only one was convicted and removed. In that case there was serious misconduct.

With two notable exceptions, no impeachment proceedings have been commenced based upon pure judicial acts, *i.e.* a judge's ruling or opinion in a particular case. In 1805, the House of Representatives impeached United States Supreme Court Justice Samuel Chase for rulings he made as a sitting judge. The impeachment resulted in an acquittal in the Senate, and established the [guiding principle](#) that judges should not be removed for their judicial acts. In 1808 the Ohio House of Representatives impeached [Justice Calvin Pease](#) following his decision to declare a state statute unconstitutional and adopt the doctrine of judicial review. The Ohio Senate acquitted Justice Pease.

## Threats to Impeach Federal Judicial Officers

While impeachment proceedings continue to be rare, threats of impeachment that do not blossom into actual proceedings undermine the public's confidence in, and respect for, the judiciary, precisely because there is no investigation or resolution. The danger of such threats is particularly acute when they are triggered by disagreement with a judge's ruling in a particular case. Again, some historical perspective is helpful.

The dawn of the modern era of impeachment threats in retaliation for an unpopular ruling came in 1954. The decision in *Brown v. Board of Education* was met with harsh, bitter criticism from all corners of the country and included widespread, [angry calls](#) to [impeach Chief Justice Earl Warren](#) and the associate justices for their "judicial activism" in negating the separate but equal principle. According to the Congressional Record, legislators, governors and even judges threatened to defy

the ruling, and bills were introduced to limit the power of the courts to declare state laws unconstitutional and to prohibit the Supreme Court from reviewing or changing prior opinions absent Congressional approval.

Since 1954, there has been [15 attempts to impeach federal judges](#) for alleged improprieties or unpopular judicial decisions. Following are some of the more noteworthy attempts.

In 1969, President Nixon instigated an effort to impeach Associate Supreme Court Justice [Abe Fortas](#) led by Congressional surrogates and the Justice Department under Attorney General John Mitchell. The Mitchell investigation focused on the Justice's financial dealings with a convicted securities manipulator. No resolution or articles of impeachment were introduced, and the investigation never documented an impeachable offense. Yet, Justice Fortas resigned, creating a vacancy for Nixon to fill.

In 1970, the House Minority Leader Gerald R. Ford called for the impeachment of Associate Supreme Court Justice [William O. Douglas](#). In a lengthy [Floor Speech](#), Ford acknowledged that he "would never advocate action against a Member of the [United States Supreme Court] because of his political philosophy or the legal opinions which he contributes to the decisions of the court" because "a judge's right to his legal views, assuming they are not improperly influenced or corrupted, is fundamental to our system of justice." Ford premised the righteousness of Douglas' impeachment on the Justice's off-the-bench writings in pornographic magazines, his book legitimizing rebellion against the political establishment, his association with ultra-liberal or allegedly criminal organizations, and his refusal to recuse himself in the libel case *Ginsberg v. Goldwater*, 396 U.S. 1049(1970), even though he received compensation for writing an article in Ginsberg's magazine while the case was pending below. Eight months after Ford's floor speech, the [House Judiciary Committee voted](#) along party lines to take no action.

In 1976, an impeachment resolution was brought against [140 federal judges](#) who sued to force the Government to address the destructive effect of inflation on the Judiciary's ability to function properly during the period 1969 to 1975. The resolution died in committee.

In 1981 an impeachment resolution was introduced against district court Judge [Nauman Scott](#) following his opinion on [court-ordered busing](#). The resolution died in committee.



During the 1996 presidential campaign, both President Clinton and Senator Dole called for the impeachment of United States District Court [Judge Harold Baer](#) as a result of his decision to suppress evidence in a notorious drug dealer case. The controversy lost steam after the prosecutor came forward with new evidence and Judge Baer reversed his ruling. The defendant was convicted at trial.

In 2005 Congress enacted legislation to impose exclusive federal court jurisdiction over the Terry Schiavo right-to-die cases pending in the Florida state courts. Congressional leaders threatened [impeachment](#) after the district court judges in Florida refused to usurp the state courts' jurisdiction. No articles of impeachment were introduced, even though the controversy continued in the courts and political arena.

In 2009, House Democrats called for the impeachment of Ninth Circuit [Judge Jay Bybee](#) after it came to light that as a lawyer in the Justice Department's Office of Legal Counsel in 2002, he approved and signed legal opinions concluding that interrogation techniques such as water-boarding did not constitute torture under federal law. No impeachment proceedings were initiated.

In 2019, House Democrats introduced an [impeachment resolution](#) against Associate Justice Brett Kavanaugh based on renewed allegations of sexual misconduct that preceded his appointment to the court. No action has been taken on that resolution.

In February 2025, Presidential Advisor Elon Musk called for "[an immediate wave of judicial impeachments](#)" against judges for checking the power of the Trump administration to overhaul the government. He called for the impeachment of United States Court Judge John Bates, who issued a temporary restraining [order](#) requiring federal health agencies to restore online datasets the administration ordered to be taken down. He also pressed for the impeachment of United States District Court [Judge Paul A. Engelmayer](#) in response to the Judge's [order](#) temporarily restraining the Treasury Department from providing access to its payment systems to anyone other than civil servants. A week later House Representative Derrick Van Orden filed [articles of impeachment](#) against Judge Engelmayer. Representative Andrew Clyde followed suit by announcing [his intent](#) to prepare articles of impeachment against United States District Court Judge John J. McConnell, Jr, who [ordered](#) the administration to temporarily lift a federal spending freeze. A week later Representative Andy Ogles introduced [articles of impeachment](#) against Judge Bates.

## Threats to Impeach State Court Judges

Calls for the impeachment of state court judges may pose an even more serious problem, especially in states where judges are elected and impeachment usurps the will of the people. In 2010, the National Center for State Courts reported that the 2000 to 2010 decade witnessed “a dramatic increase in not only threats to impeach state court judges because of their decisions, but the actual drafting of legislation to that effect.” NCSN, *Gavel to Gavel, Special Impeachment Edition*, December 2010, p.1. A year later, NCSC reported that “2011 saw more efforts to impeach or otherwise legislatively-remove state judges from office than at any point in recent history, indeed perhaps in all of U.S. history.” NCSC, *Gavel to Gavel, 2011 Year in Review: Record number of impeachment attempts against judges for their decisions*, December 21, 2011. A number of these bills sought to impeach or condemn judges who issued rulings favorable to same sex marriages. Other judicial rulings prompting impeachment threats included those that imposed sentences perceived to be too lenient in criminal cases and rulings in contested divorce and custody disputes.

While 2010 and 2011 may stand out as watershed years in terms of the sheer number of impeachment threats, such threats persist today, arise in politically charged circumstances, and receive heightened notoriety. In 2021, eighteen Pennsylvania state representatives introduced a [resolution](#) setting forth Articles of Impeachment against a sitting Supreme Court Justice, citing numerous decisions he authored or joined with which they disagreed. The resolution was not brought forth for a vote. In 2022, [Republican leadership](#) threatened to impeach Ohio’s Supreme Court Chief Justice, a Republican, because she joined with the Court’s three Democratic associate justices to strike down the Republican-crafted redistricting law. Two separate impeachment threats surfaced in [North Carolina](#) in 2022. Impeachment threats were lobbed at a trial court judge who ruled in favor of the right of schoolchildren in poor areas to receive a sound education. Republican legislators “seriously discussed” impeaching the Democratic Supreme Court justices should they strike down the Republican-gerrymandered legislative and congressional districts. In 2023, Republican leadership in Wisconsin [threatened impeachment](#) proceedings against a newly-elected Supreme Court justice who voiced concerns pre-election about the Republican-drawn state redistricting law if she did not recuse herself from pending cases involving the law. In 2023, a prominent religious conservative

called for impeachment of three [Iowa Supreme Court Justices](#) based on their decision in an abortion case.

Threats against state court judges based upon legislative or public disagreement with their rulings recently expanded to include a preemptive tactic. State legislatures now are directing their assaults against the judiciary on a macro level by seeking to limit the powers of the judicial branch or changing the manner of judicial selection. The Brennan Center for Justice tracks legislative assaults on the judiciary on a yearly basis. The Center reported an alarming number of such assaults in [2021](#) (153 bills in 35 states), in [2022](#) (74 bills in 25 state), in [2023](#) (124 bills in 29 states), and in [2024](#) (49 bills in 20 states).

A few of these bills included an impeachment provision to prohibit or dissuade future judicial action in high-profile cases. The South Carolina legislature introduced an [anti-abortion bill](#) in 2021 which would have declared *Roe v. Wade* void and subjected any judge who violated the bill to impeachment. The bill died in committee. An anti-abortion [bill](#) introduced in Louisiana in 2022, in anticipation of the overturning of *Roe v. Wade*, criminalized abortions and provided for the impeachment of any judge that declared the bill unconstitutional. The impeachment provision was not included in the [act adopted in 2024](#) to ban abortions in Louisiana. The November 2022 ballot in West Virginia included a [legislatively referred constitutional amendment](#) that would prevent the courts from intervening in impeachment proceedings and exempt any impeachment judgment rendered by the state senate from judicial review. A majority of the voters (57.81%) [rejected](#) the proposed amendment. In 2023, following the voters' adoption of a constitutional amendment protecting the right to abortion, Ohio state legislators proposed [a bill](#) that would give the Ohio General Assembly exclusive jurisdiction over the amendment, strip the courts of jurisdiction, and subject a judge who exercised any jurisdiction over the new amendment to impeachment. The Governor of Ohio opposed the bill, and it [died in committee](#). In January 2025 the Montana Senate, acting on the request of the Senate Committee on Judicial Oversight and Reform, passed and transmitted to the House, [a bill](#) to expand the grounds for impeachment of public officials, including judges, "corruption, incompetence, negligence in the performance of one's duty, willful neglect of duty, oppressive use on one's office or misconduct in office."

## Impeachment Threats Cannot Be Ignored

Recent threats of impeachment triggered by unpopular though legitimate decision-making follow the historical pattern in that they are little more than political grandstanding, unlikely to blossom into serious impeachment proceedings. Yet that does not mean they can or should be ignored. In some respect, they are more dangerous than a successful impeachment. Articles of impeachment bring forth serious proceedings in which allegations must be tested and proven. They offer time for debate and deliberation. They require a public record of the evidence and reasoning and are more likely to result in an acquittal than a conviction. Off-the-cuff threats of impeachment offer no such protections or time for reflection and understanding. The public hears only the untested, and too often unanswered, condemnation of a judge's legitimate decision as unlawful or unethical.

These threats are more likely to be incendiary today. Social media has become increasingly significant in terms of how the public, and particularly Millennials and GenZ, [gets the news](#). These sources allow threats and allegations to be quickly and widely disseminated and weaken the chances for counterinformation to surface before the news moves on. Largely attributed to the decline in basic [civics education](#), a significant percentage of the population [lacks basic knowledge](#) about our constitutional democracy, leaving them ill-equipped to recognize misinformation about the workings of the judicial system. That may explain the startling statistics in a recent [poll](#) by the Annenberg Public Policy Center of the University of Pennsylvania that thirty-eight percent of its respondents thought that "when Congress disagrees with the Supreme Court's decisions, Congress should pass legislation saying the Supreme Court can no longer rule on that issue or topic." Twenty-six percent agreed "it might be better to do away with the court altogether" if the justices "started making a lot of rulings that most Americans disagreed with."

There always will be some judicial decisions that incite strong reactions and criticism, and, without question, every citizen has the right to openly disagree with a decision. When appropriate, citizens may annul an unpopular decision by amending their constitutions, lobbying their representatives for legislative change, or exercising rights of initiative and referendum. In a [majority of states](#), citizens may remove a sitting judge by voting in an election. But impeachment threats are not an appropriate response to controversial judicial decisions. Such threats undermine the foundational principles of judicial review and separation of powers. Courts are not

established to follow opinion polls or to discern the will of the people at any given time, but rather to uphold the law. Courts need to be free from outside influence or political intimidation, so judges can fairly and impartially decide cases, without fear or favor, faithful to the law and the facts presented.

Suffice it to say, now is not a time for complacency. The College, College Fellows, lawyers, judges, historians, political scientists, and all who value our democracy should continue to speak out to inform the public about the judicial system and to condemn all threats against the judiciary, including threats of impeachment.