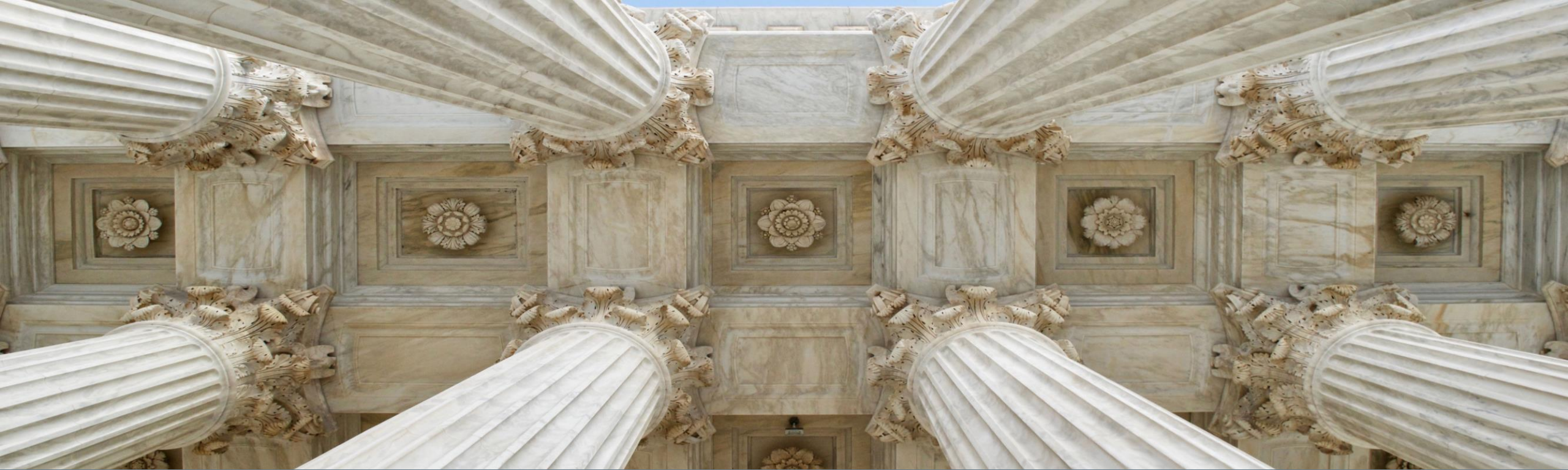


Are we losing independent courts?

NAWJ Judicial Independence Committee





Are we losing independent courts?



A project of the
National Association of
Women Judges

JUDICIAL INDEPENDENCE COMMITTEE LEADERSHIP



Justice Debra Stephens
Washington State Supreme
Court
Co-Chair, NAWJ Judicial
Independence Committee



Justice Robin Hudson
Retired N.C. Supreme
Court;
Co-Chair, NAWJ
Judicial Independence
Committee



**Chief Judge Caretta
Sims Brown**
State of Georgia
NAWJ Judicial
Independence
Committee



Annette Boyd Pitts
Director
Justice Teaching
Center,
IVP National
Education Chair



A MATTER OF RESPECT

- “If citizens have respect for the work of the courts, their respect for law will survive the shortcomings of every other branch of government; but if they lose respect for the work of the courts, their respect for law and order will vanish to the great detriment of society...”
- Former ABA President and New Jersey Supreme Court Chief Justice Arthur Vanderbilt (1955:4)



OBJECTIVES

1. Recognize domestic and global threats to judicial independence.
2. Evaluate factors in the United States contributing to declines in public trust and confidence in the judicial branch.
3. Engage in strategies to strengthen judicial independence.
4. Identify resources to educate the public on the judicial branch and the importance of an independent and impartial judiciary.

ENGAGEMENT GROUPS

Why is the public losing respect for the courts and the judiciary?

NC justice system overhaul injects politics into state's court system, critics say

The Charlotte Observer





THREATS AND CHALLENGES

- Politicization of the judiciary and judicial decisions
- Partisan judicial selection processes
- Misinformation
- Media messages
- Corruption
- Legislative and executive attempts to weaken or control the courts or judicial decision-making
- Influence of money in judicial selection
- Personal threats and assaults
- Declining public trust and confidence in the judicial branch

JUDICIAL INDEPENDENCE

The idea is simple:

The judiciary must be separate from the other branches of government.

Judges must not be subject to improper influence from the other branches of government, or from private or partisan interests.





CHARACTERISTICS OF AN INDEPENDENT JUDICIARY

A truly independent judiciary has three characteristics.

- First, impartiality. Judges should consider each case with an open mind, rendering an unbiased judgment.
- Second, a “reputation for impartiality and nonpartisanship,” as recommended in the 1989 decision by the Supreme Court, *Mistretta v. United States*.
- Third, freedom from outside interference.

THREATS TO JUDICIAL INDEPENDENCE: GLOBAL AND LOCAL



WORLD JUSTICE PROJECT: RULE OF LAW INDEX



World Justice Project



WJP Rule of Law Index®

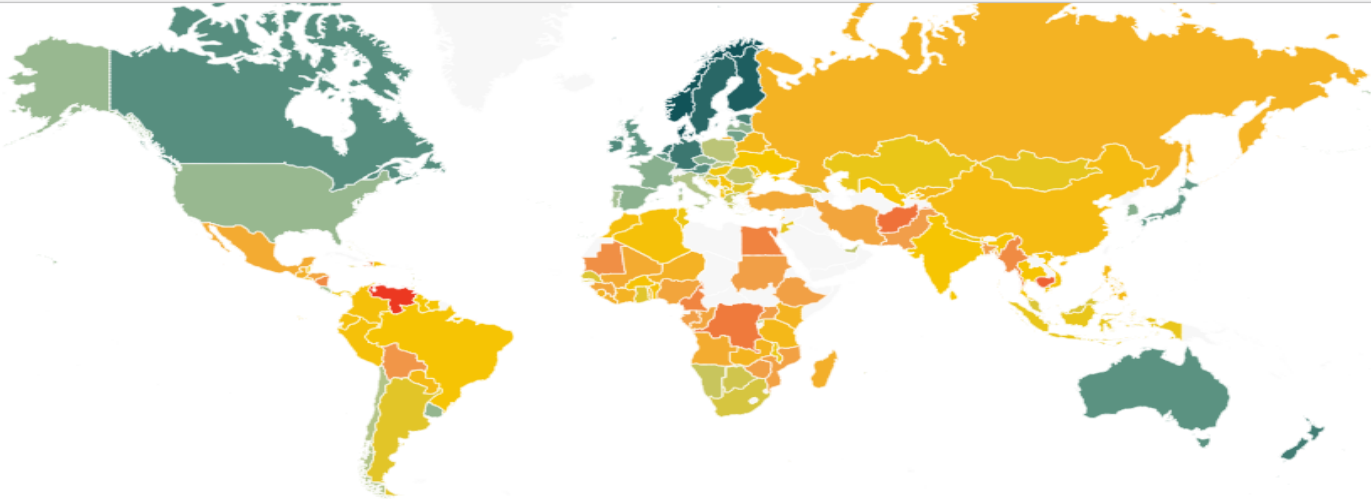
Rankings



OVERALL

COUNTRY

2022



RANKING

HISTORICAL

TABLE



2023 FREEDOM HOUSE WORLD REPORT



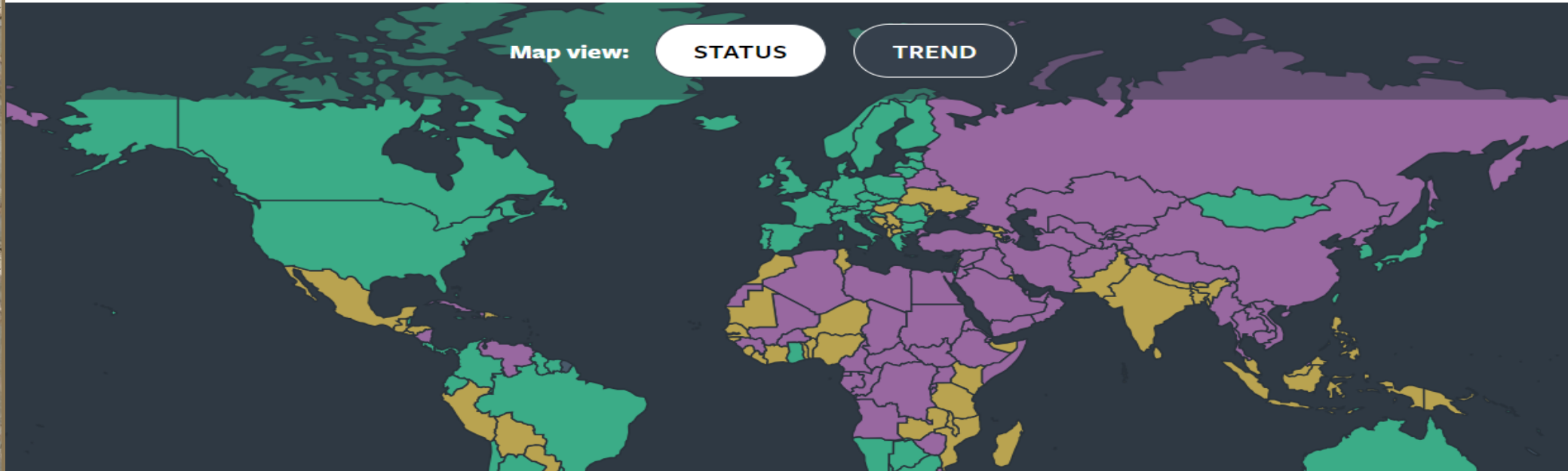
[Our Issues](#)

[Perspectives](#)

[Policy Recommendations](#)

[Explore the Map](#)

[Donate](#)



Global Freedom Status

Freedom in the World assigns a freedom score and status to 210 countries and territories. Click on the countries to learn more.

● NOT FREE

● PARTLY FREE

● FREE

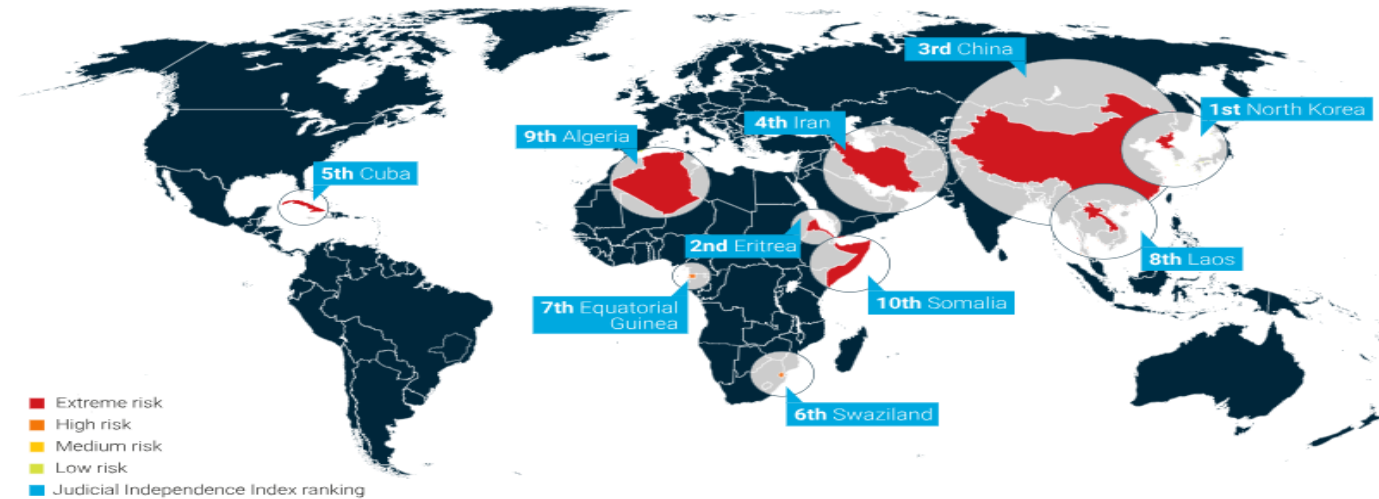
Global freedom statuses are calculated on a weighted scale. [See the methodology.](#)

2021: HIGH RISK COUNTRIES

Figure 2: The 10 highest risk countries in the Judicial Independence Index



These countries score poorly in our human rights and political risk indices.



Rank	Country	Access to Remedy	Freedom of Expression	Rule of Law	Democratic Governance
1	North Korea	Extreme risk	Extreme risk	Extreme risk	Extreme risk
2	Eritrea	High risk	Extreme risk	High risk	High risk
3	China	High risk	Extreme risk	High risk	High risk
4	Iran	High risk	Extreme risk	High risk	High risk
5	Cuba	High risk	Extreme risk	High risk	High risk

Rank	Country	Access to Remedy	Freedom of Expression	Rule of Law	Democratic Governance
6	Swaziland	High risk	Extreme risk	High risk	High risk
7	Equatorial Guinea	High risk	Extreme risk	High risk	High risk
8	Laos	High risk	Extreme risk	High risk	High risk
9	Algeria	High risk	Extreme risk	High risk	High risk
10	Somalia	High risk	Extreme risk	High risk	High risk

[Download the report](#)

JUDICIAL OVERHAUL IN ISRAEL: SALAMI TACTICS

Israel's Judicial Overhaul | What to Know | Supreme Court Weighs Law | What's at Stake? | A Fractured Nation

Will Israel Push Judicial Overhaul Slice by Slice?

Critics of the government's plan to limit the power of courts are wary of what they call "salami tactics," slicing up the project into smaller pieces to try to make it more palatable.

[Share full article](#) [Share](#) [Bookmark](#) [17](#)



AFGHANISTAN OVERHAUL



SOUTH & CENTRAL ASIA

Taliban Undertake Speedy Overhaul of Afghanistan's Justice System

September 28, 2023 6:14 PM

Akmal Dawi



NICARAGUA

Nicaragua *Events of 2022*

A demonstrator with a banner calling for the freedom of political prisoners in Nicaragua takes part of a march of Nicaraguans exiled in Costa Rica, in San José, Costa Rica, November 6, 2022.

© 2022 REUTERS/Mayela Lopez

AVAILABLE IN 

EGYPT



POLAND



WHAT ARE THE THREATS IN U.S. ?

- Politicization of the courts and judges
- Influence of money in judicial selection
- Limited knowledge and understanding of the judicial branch/ Misinformation
- Attacks on judges / Reprisals for unpopular decisions
- Other

NC justice system overhaul injects politics into state's court system, critics say

The Charlotte Observer



IN THE NEWS: WISCONSIN



Wisconsin Supreme Court candidates often speak out on hot topics. Only one faces impeachment threat
Milwaukee Journal Sentinel

Election 2023 Updates Chicago Mayor Chicago City Council Wis. Supreme Court Wis. Spring Elections



Wisconsin Supreme Court Election Results

Wisconsin's State Supreme Court election carries bigger policy stakes than any other race in the country this year. It will decide whether conservatives (like Justice Kelly) or liberals (like Judge Protasiewicz) control the otherwise evenly divided court, which will determine the fate of abortion rights, gerrymandered political maps and a range of voting rights issues in the battleground state. [Full results from the primary election](#)



WINNER ✓

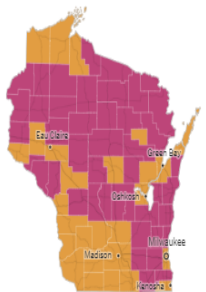
Janet Protasiewicz wins the Supreme Court race in Wisconsin.

Race called by The Associated Press.

Latest results from April 7

>95% OF VOTES IN

Candidate	Votes	Pct.
Janet Protasiewicz	1,021,370	55.5%
Daniel Kelly	818,286	44.5%
Total reported	1,839,656	



LEADER

Protasiewicz Kelly

By leader

Size of lead

Results by county

County	Protasiewicz	Kelly	Total votes	% In
Dane	82%	18%	240,376	>95%
Milwaukee	73	27	233,588	>95%
Waukesha	42	58	162,974	>95%
Brown	52	48	76,801	>95%
Racine	49	51	57,123	>95%
Outagamie	51	49	54,589	>95%

+ View all

Source: Election results and race calls are from The Associated Press.

Produced by Michael Andre, Neil Berg, Matthew Bloch, Irineo Cabreros, Nate Cohn, Lindsey Rogers Cook, Annie Daniel, Saurabh Datar, Andrew Fischer, Martín González Gómez, Will Houp, Aaron Krolik, Jasmine C. Lee, Ilana Marcus, Charlie Smart and Isaac White. Editing by Wilson Andrews, William P. Davis, Amy Hughes, Ben Koski and Allison McCartney.

Pennsylvania lawmaker calls for impeachment of state Supreme Court judges who struck down congressional map

OPINION 02/12/2018 11:58 am ET

WASHINGTON
Examiner

Attack On Pennsylvania Supreme Court Is An Attack On The Rule Of Law Itself

HUFFPOST

NC justice system overhaul injects politics into state's court system, critics say

OP-ED

The News & Observer

The Charlotte Observer

Fight to keep N.C. courts independent of General Assembly politics

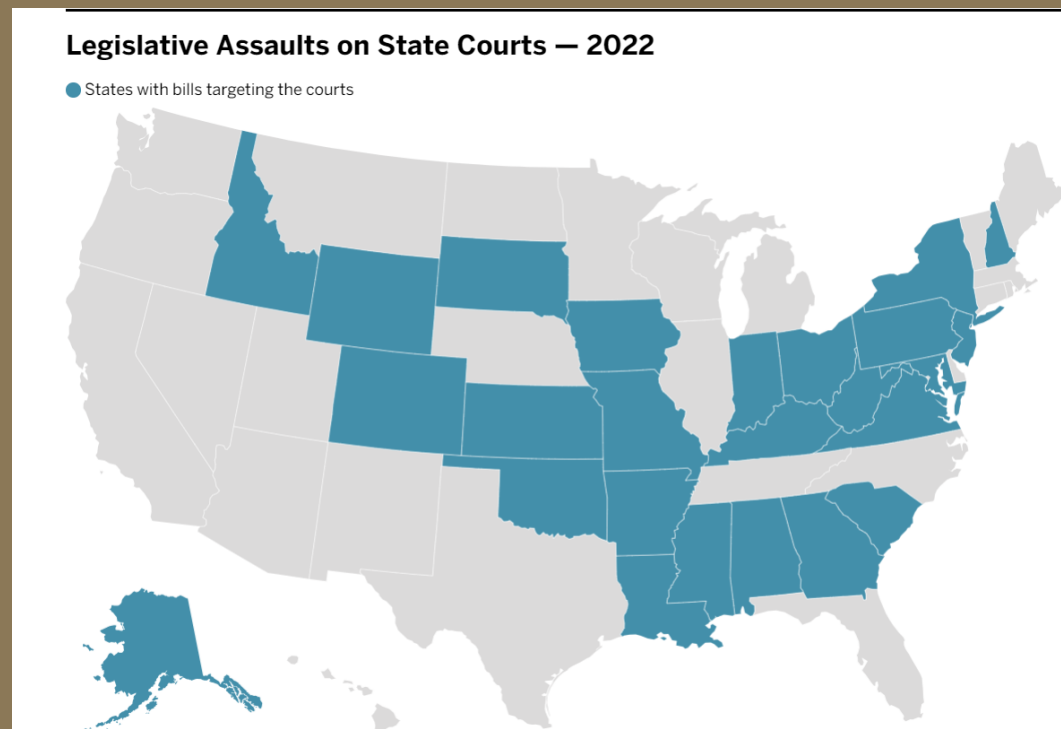


PERSONAL THREATS AND ASSAULTS

- Last five years, threats to federal judges increased 400%.
- More than 4,500 threats against federal judges during 2021.
- Example: Judge Esther Salas
- Increase in state courthouse violence
- Personal safety issues of judges and staff

LEGISLATIVE ACTIONS TO IMPACT THE ROLE OR INDEPENDENCE OF THE COURTS

- In 2022, state lawmakers in 25 states nationwide considered over 70 bills that would politicize or undermine the independence of the state courts:
- At least 5 bills became law in 3 states



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DOES AMERICA STILL TRUST THE SUPREME COURT?



With Dorothy Wickenden

January 27, 2022



Does America Still Tru...

15:36 / 25:42



The New Yorker: Politics and More

<https://www.newyorker.com/podcast/politics-and-more/does-america-still-trust-the-supreme-court>

NEW HISTORIC LOW



The Gallup Poll released on June 23, 2022 reported public trust and confidence in the United States Supreme Court has dropped sharply reaching a new historic low.

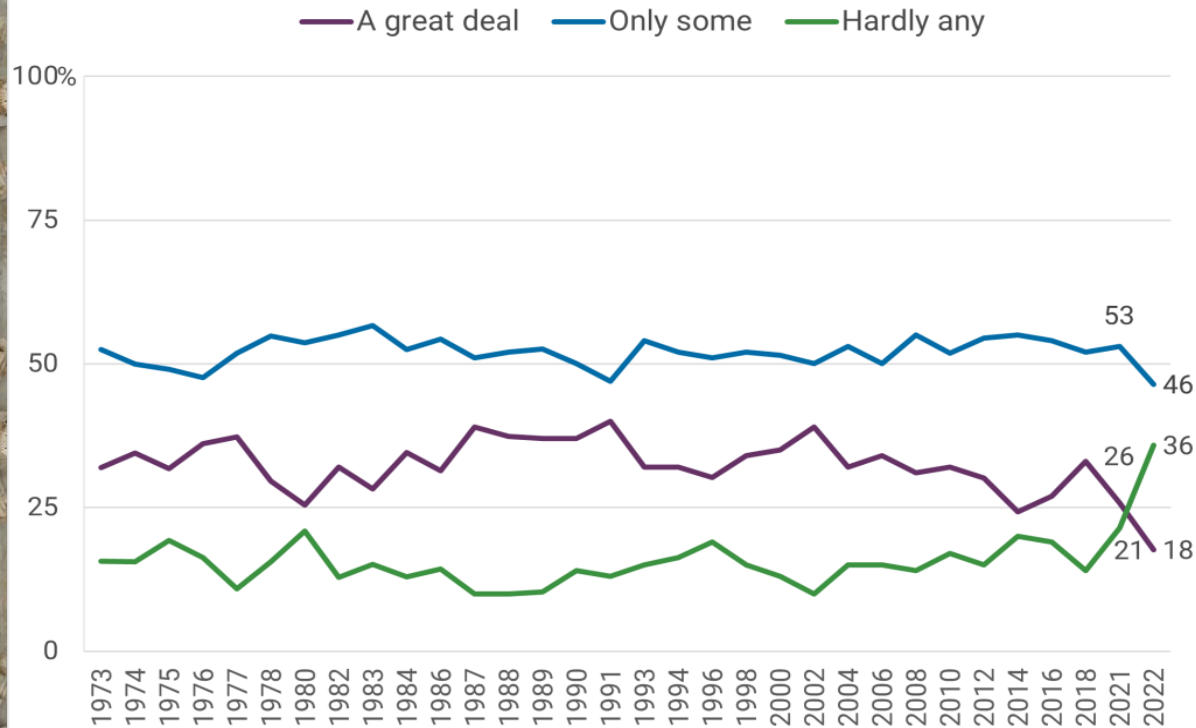
- Only 25% of Americans have confidence in Supreme Court, down from 36% in 2021

Jones, J. (2022, July 5). Confidence in U.S. Institutions Down; Average at New Low. Gallup.com.

Public Confidence in Institutions

Overall confidence in the Supreme Court hit a record low in 2022.

Percent of adults



Question: [U.S. Supreme Court] As far as the people running these institutions are concerned, would you say you have a great deal of confidence, only some confidence, or hardly any confidence at all in them?

Source: General Social Survey, the latest conducted May 5-December 20, 2022.

Change in Americans' Confidence in Major U.S. Institutions, 2021-2022

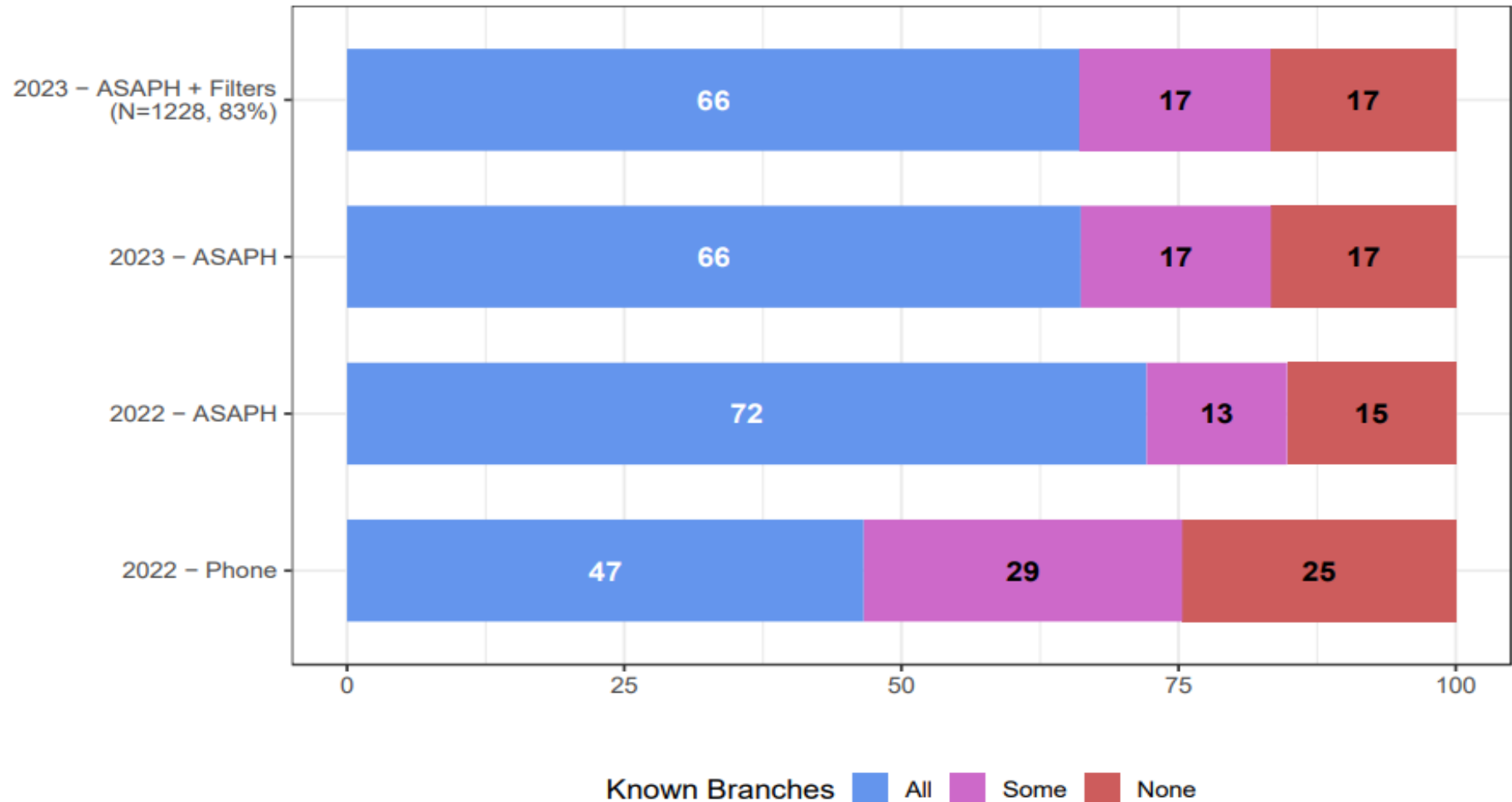
Now I am going to read you a list of institutions in American society. Please tell me how much confidence you, yourself, have in each one -- a great deal, quite a lot, some or very little.

	2021	2022	Change pct. pts.
	% Great deal/Quite a lot	% Great deal/Quite a lot	
Small business	70	68	-2
The military	69	64	-5
The police	51	45	-6
The medical system	44	38	-6
The church or organized religion	37	31	-6
The public schools	32	28	-4
Organized labor	28	28	0
Banks	33	27	-6
Large technology companies	29	26	-3
The U.S. Supreme Court	36	25	-11
The presidency	38	23	-15
Newspapers	21	16	-5
The criminal justice system	20	14	-6
Big business	18	14	-4
Television news	16	11	-5
Congress	12	7	-5

Institutions are ranked from highest to lowest confidence in 2022.

KNOWLEDGE OF THE 3 BRANCHES

Three Branches of Government



A photograph of several white marble columns with fluted shafts and ornate capitals, set against a light-colored wall. The columns are arranged in a perspective that leads the eye towards a doorway in the background.

MONEY POURS INTO STATE JUDICIAL ELECTIONS

- In 38 states, supreme court judges must stand for election. These elections take various forms — partisan, nonpartisan, or uncontested retention elections, in which citizens vote simply to keep or remove a judge.
- In recent elections unprecedented amounts of money have poured into these campaigns. The 2019-2020 election cycle set a record for spending on state justice elections, with \$97 million spent on the races nationwide, according to a Brennan Center report.
- Michael Waldman. “Money Pours into State Judicial Elections | Brennan Center for Justice.” www.brennancenter.org, 25 Jan. 2022, www.brennancenter.org/our-work/analysis-opinion/money-pours-state-judicial-elections.



THE
POLITICS
OF JUDICIAL
ELECTIONS
2015-16

Who Pays for Judicial Races?

By Alicia Bannon, Cathleen Lisk, and Peter Hardin

With Douglas Keith, Laila Robbins, Eric Velasco,
Denise Roth Barbet, and Linda Casey

Brennan Center for Justice *at* New York University School of Law
National Institute on Money and State Politics

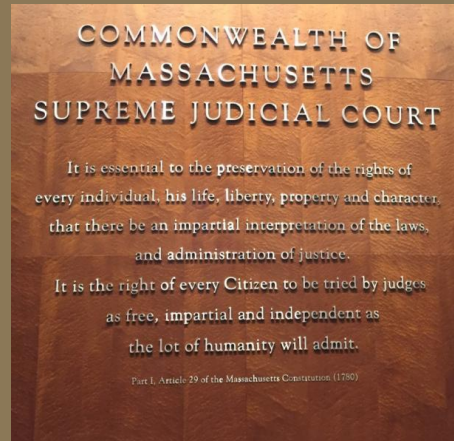
BRENNAN CENTER FOR JUSTICE
TWENTY YEARS

at New York University School of Law

- Election cycle identified:
 - Surge in dark money
 - Record-breaking outside spending
 - Attacks on judicial decisions in television ads
 - More million-dollar races

JOHN ADAMS

In 1780, John Adams drafted the Declaration of Rights in the Massachusetts Constitution: “It is the right of every citizen to be tried by judges as free, impartial, and independent as the lot of humanity will admit.”



American Board of Trial Advocates. *Preserving a Fair, Impartial, and Independent Judiciary.*

TRUST AND CONFIDENCE



- Courts rely upon public trust and confidence to uphold the rule of law in our society.
- Declines in public trust and confidence at the United States Supreme Court level may also have a trickle-down effect on other jurisdictions including state courts.
- Public perceptions of bias, including political bias in judicial decision-making.

WHY DOES JUDICIAL INDEPENDENCE MATTER?

- Do people trust the judiciary will make decisions based on the law?
- Will people comply with court decisions even if they disagree with those decisions?

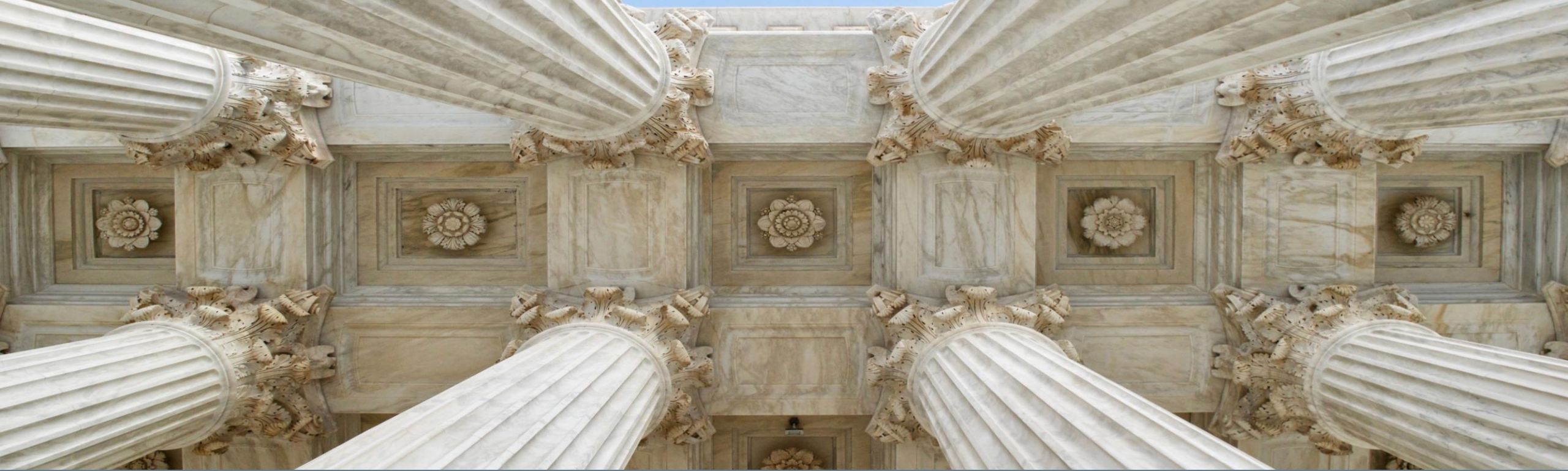


OUTCOMES

People comply because there are consequences but also because they believe in the rule of law and the fair disposition of those consequences.

- If people lose respect...less likely to seek help of the courts or comply with dictates of the courts.





WHAT CAN WE DO?

WHAT CAN WE DO – SMALL GROUP ENGAGEMENT EXERCISE



Questions
Answers

A photograph of several white marble columns with fluted shafts and ornate capitals, likely from a classical building. The columns are arranged in a perspective that leads the eye towards a doorway in the background.

WHAT WE KNOW.....

- Knowledge of the courts drives support for an independent judiciary. As found in prior research on the courts, building long-term public support for an independent judiciary will require the public to become better informed about the courts.
- Surveys show that those Americans with the most knowledge of the ways the courts function tend to be among the most likely to reject attempts to reduce the courts' powers.

Speak to American Values. Justice at Stake. 2006

A photograph of several large, fluted marble columns in a classical architectural style, likely from a government building or courthouse. The columns are arranged in a perspective that leads the eye towards a doorway in the background. The lighting is dramatic, highlighting the texture of the marble.

STRENGTHENING KNOWLEDGE OF THE COURTS

“Having an understanding of the role of appeals, precedent, Constitutional review, and other aspects of the courts appears to reinforce an appreciation for the courts and their role as Constitutional guardian.”

- Speak to American Values, A Handbook for Winning the Debate for Fair and Impartial Courts (2006)

Educating on the role of appeals, precedent, accountability measures, disciplinary procedures, guardians of the constitution, role of courts, how judges make decisions, and checks and balances



THE ROLE OF JUDGES IN PUBLIC EDUCATION

“...the legal profession should embark on a comprehensive program of public education and that judges should play the leading role in this effort...judges should accept, as part of their professional and social obligation, the responsibility to educate the public about what they do and why, what the law is, and what it is not.”

- The Judge 's Role in Educating the Public about the Law, Marna S. Tucker

ACCOUNTABILITY



Goal:

A Fair and Impartial Judiciary

HOW DO WE GET THERE? ▶



North Carolina Code of Judicial Conduct

Canon 2 A judge should avoid impropriety in all the judge's activities.

A. A judge should respect and comply with the law and should conduct himself/herself at all times in a **manner that promotes public confidence in the integrity and impartiality of the judiciary.**

...manner that promotes public confidence in the integrity and impartiality of the judiciary.

influence the judge's judicial conduct or judgment. The judge should not lend the prestige of the judge's office to advance the private interest of others except as permitted by this Code. The judge should not allow the judge convey or permit others to convey the

...should not allow...social or other relationships to influence the judge's judicial conduct or judgment.



NORTH CAROLINA
STATE BAR

Rules of Professional Conduct

Preamble

...further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority.

a learned profession, a lawyer should cultivate knowledge of the law and the needs of clients, employ that knowledge in reform of the law, and work to strengthen legal education. In addition, a lawyer should **further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority.**

RULES OF PROFESSIONAL CONDUCT

NORTH CAROLINA STATE BAR