



Leadership and Accountability in the Utah Legislature Series

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Part 2 of 6. The Utah Legislature has been undermining basic checks and balances in our state

Courts sometimes get things wrong. So do legislatures. So do governors. That is precisely why our democracy requires a separation of powers.

In 2018, Utah voters approved Proposition 4 to limit partisan gerrymandering. The Legislature immediately tried to remove its central protections. In 2024, the Utah Supreme Court ruled that Utahns have a constitutional right to reform our government and lawmakers couldn't simply nullify a voter-approved reform. The court did what an independent judiciary is supposed to do: remind the legislature that its authority has limits.

What followed should concern Utahns across the political spectrum.

First the legislature passed SB 296, aiming to take selection of the chief justice away from the justices and give it to the governor and Senate, with the chief justice subject to political reappointment every four years. Gov. Spencer Cox vetoed it, warning that it infringed on the independence of the chief justice.

So the legislature tried again. A revised bill, SB 1003, replaced the recurring political audition with a single eight-year term. But it still transferred selection of Utah's chief justice from the court to the political branches.

Then the legislature passed SB 134. It expanded the Utah Supreme Court from five justices to seven, allowing the governor to appoint two new members while redistricting disputes remained active. The court had not requested those seats. Chief Justice Durrant told lawmakers the Supreme Court had "essentially no backlog" and urged them to direct resources toward lower courts.

Legislators may reject the term "court-packing." But when political leaders expand a court that did not request expansion, during an active fight over rulings that threaten their hold on power, the public has the right to call it for what it is.

Then the legislature passed HB 392. Imagine that you believe the state has violated your constitutional rights. You file a lawsuit and a judge is assigned under the ordinary rules. Under HB 392, the government you sued can then unilaterally remove the judge assigned and send your case to a special three-judge panel. It doesn't have to prove that the change



is necessary. You cannot challenge that decision. In other words, HB 392 allows government officials to discard the normal process when their own actions are challenged.

And lawmakers prepared for the possibility that a court might find this arrangement unconstitutional. HB 366 creates a backup. If the three-judge system is struck down, a new Constitutional Court takes its place, with exclusive authority over many challenges to state power. Its three judges would be nominated through a commission appointed entirely by the governor.

That is not a minor modification of our courts. It allows the government being sued to rewrite the process by which its own conduct will be judged.

Rep. Jason Thompson voted for these measures. I don't claim to know what motivated his vote. Supporters have cited efficiency, consistency and concerns about one judge making decisions with statewide consequences. Those concerns deserve a fair hearing.

But representation requires stepping back from each bill's talking points and examining the cumulative effect. Political leaders gained influence over who leads the Supreme Court. They expanded Utah's highest court after the court ruled against them. They gave themselves power to redirect lawsuits challenging state action. And they built a backup court in case that system was rejected.

Taken together, the unmistakable effect of these bills is to make the judiciary less independent and less capable of checking legislative power.

I would have approached this differently: identify where court delays actually exist, invite judges, attorneys, constitutional scholars and ordinary Utahns into a serious public discussion, and pursue reforms that do not give one branch greater control over another.

Courts should be open to scrutiny. Judges should be open to legitimate criticism. Accountability is good. But political control of courts is un-American and anti-democratic. The health of our democracy depends on protecting our balance of power. By supporting each of these measures, Jason Thompson helped shift that balance in the wrong direction. What other rights and personal freedoms might the legislature infringe upon, as they exert more and more control over the courts?

I welcome your comments and thoughts. Next week, we'll be talking about bills passed by the Utah Legislature that have the effect of weakening democracy and voting access.