



# THE COST OF JUSTICE: BUDGETARY THREATS TO AMERICA'S COURTS





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A REPORT OF THE CONSTITUTION PROJECT'S  
COURTS INITIATIVE

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We are grateful to the Open Society Institute for its support of our Courts Initiative.

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# THE COST OF JUSTICE: BUDGETARY THREATS TO AMERICA'S COURTS

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“[W]hile there are things [people] may have to give up in trying fiscal times, justice cannot and must not be one of them.”<sup>1</sup>

## Introduction

America’s founders, in creating a democracy consisting of three branches of government, intended that the judicial branch—and the courts that it comprises— protect individual rights and liberties against overreaching by the other two branches of government. The Constitution therefore establishes a judiciary that is independent from and equal in stature to the executive and legislative branches. At both the federal and state levels, independent courts are critical to preserving our constitutional system of checks and balances and protecting our constitutional rights. In recent years, however, fiscal crises in the states have dramatically affected the ability of state judicial systems to fulfill their important constitutional duties.

In 2000, the Constitution Project’s Courts Initiative released *Uncertain Justice: Politics and America’s Courts*, containing four bipartisan task force reports on issues affecting the independence of our courts, such as judicial selection, criticism of judges, and legislative limits on or elimination of the jurisdiction of the courts.<sup>2</sup> Among the many important recommendations set forth in *Uncertain Justice* was one by the Task Force on the Role of the Legislature in Setting the Power and Jurisdiction of the Courts stating that “legislatures should ensure that courts have adequate resources and judges to perform their essential functions.” The Task Force also recommended that legislatures “refrain from restricting” and “take necessary affirmative steps to ensure” access to the courts. This report, *The Cost of Justice: Budgetary Threats to America’s Courts*, examines those two recommendations in practice at the state level, by exploring the impact of budgetary cutbacks on state judicial systems.<sup>3</sup>

## Underfunded Courts Threaten Access to Justice

The Constitution established a federal government consisting of three coequal branches: the executive, the legislature, and the judiciary. Each branch exercises constitutionally defined functions that are protected from interference by the other branches. Each branch also exercises certain powers over the others. This system of “checks and balances” has always been considered a defining feature of American democracy.<sup>4</sup> All fifty states have adopted a similar structure through their respective state constitutions.

At both the federal and state levels, the role of the judicial branch is unique and distinct from the other two branches of government. Unlike the executive and legislative branches, which represent political and popular majorities, the judiciary is the “nonmajoritarian” branch of government. It was never meant to reflect public opinion or will, or even to consider it. In fact, the judiciary was designed by our nation’s founders to protect individual rights and liberties against overreaching by political and popular majorities, as represented by the executive and legislative branches.

Not only does the Constitution recognize the importance of a judiciary independent of influence by the executive and legislature, it also provides a right of meaningful and timely access to the judiciary, so that every individual may have his or her case heard in court.<sup>5</sup> Thirty-nine states have a similar “right” embedded in their constitutions.<sup>6</sup>

Despite its equal stature and essential constitutional duties, the judiciary faces unique political obstacles to adequate funding. Unlike the executive and legislative branches, the judicial branch does not control the power of its own purse. It must appeal annually to the other branches for the funding to maintain its existence.

In addition, there may be little constituency supporting funding the judiciary, especially since many members of the public have had no experience with the courts and may not recognize their importance unless, and until, they need them. Thus, there may be little political will to protect the judiciary against drastic budget cuts that threaten its ability to carry out its constitutionally mandated responsibilities.<sup>7</sup>

In recent years, fiscal crises in states across the country have led to deep cuts in state budgets. All three branches of state government—executive, legislative, and judicial—found their resources and options increasingly limited, and in some cases were forced to undergo drastic cutbacks.<sup>8</sup> These cuts dramatically and often disproportionately affected the work of state judicial systems. This is despite the fact that, in relative terms, it costs states a minuscule amount to fund their judiciaries. In most states, the entire budget for the state judicial system

amounts to less than four percent of the state's overall annual budget.<sup>9</sup> In some states, it is even less.<sup>10</sup>

Every day, families, businesses, and individuals turn to our courts to resolve civil disputes, provide a forum for criminal complaints, and settle matters with important environmental, consumer, and financial ramifications. Without sufficient funding of our judicial system, access to justice is threatened. As one court observed, “[o]nly with proper funding of the judicial branch...can we ensure that our citizens’ constitutional right of access to their courts is protected and that disputes are fairly and timely resolved.”<sup>11</sup>

## The Actual Impact of Cutbacks to Court Funding

State court funding shortages in recent years manifested themselves in a variety of detrimental ways. Numerous states were forced to close courthouse doors. In some states, courts closed for finite periods or for certain days of the week. In others, some courthouses shut their doors forever.<sup>12</sup> Many states also had to reduce their number of judges, as well as critical court staff such as law clerks and front-office personnel, who manage case loads and ensure that cases are processed in a timely manner and court decisions are implemented. In some states, courts even suffered shortages of basic office supplies, like copier paper, pens, and staples.

Insufficient funding also led many courts to reduce the number and quality of important services that are in most states considered part of the judiciary’s responsibility and budget, and particularly services for vulnerable litigants and litigants with special needs. Examples of such programs include foreign-language and sign-language interpreters, mediators for Alternative Dispute Resolution programs, guardian *ad litem*,<sup>13</sup> counsel for indigent defendants, and other court-appointed specialists. Courts also had to limit or eliminate altogether important diversionary programs and specialized courts, such as domestic violence and drug treatment programs, and custody, drug, and other specialty courts, which many legislatures consider sensible public policy and have created to further important individual and societal benefits. Courts were also forced to raise case filing or “user” fees and add surcharges, leaving many people literally unable to afford to seek justice.

These kinds of cutbacks on courtrooms, hours, personnel, and programs pose dire consequences for individuals and organizations that rely on the courts to protect their freedoms and rights. Reduced hours and staff can lead to delays and even bans on trials in both civil and criminal cases. In civil cases, such delays may have acute economic and emotional consequences on the parties involved, particularly where one or more parties

have suffered monetary loss or personal injury or trauma. In criminal cases, such delays may cause individuals charged with a crime to be incarcerated without the court hearing to which they are constitutionally entitled, in violation of their constitutional right to a speedy trial. Innocent people may thus languish in jail, or potentially dangerous criminals may be released, denying justice to crime victims and endangering public safety.

Civil cases may also be postponed or dropped because of inadequate or nonexistent court programs or services, such as those that assist children caught in custody disputes or suffering neglect or abuse; prisoners, who have limited or no financial resources; and low-income and non-English speaking individuals needing assistance in housing, employment, and other important disputes.<sup>14</sup> Similarly, criminal cases may be dropped because of insufficient funding for defense attorneys to which poor defendants are constitutionally entitled.

What follows is a list of states in which the judicial system's budget has been reduced over the past few years in amounts that threatened or diminished its ability to perform its constitutional duties. This list is by no means exhaustive; it merely provides some of the starker examples.

### **California**

In 2003, California's judiciary budget (then about 2% of the state's overall budget) was cut by \$200 million. Numerous courts across the state were forced to shut down operations—from permanent closures to temporary shuttering of courtrooms to shortened workweeks. In Los Angeles County alone, twenty-nine courtrooms were closed. Riverside and Sacramento each closed three trial courts, and trial courts reduced operating hours in Alameda, San Francisco, Santa Clara, and Riverside counties. Solano, Yolo, Placer, and Sonoma counties implemented staff furloughs, and Moreno Valley, Corona, and Palm Springs eliminated their traffic and small claims courts. Fresno County's courts were forced to eliminate twenty-nine staff positions on top of twenty-two vacancies that already existed (two of those positions were saved by the willingness of court employees to volunteer for unpaid furloughs). Meanwhile, caseloads continued to rise, and the vacancies caused delays to increase in every division in that county's court system. One Los Angeles trial court judge recounted having to purchase pencils, pens, copier paper, and note pads for the court out of her own pocket because there were no longer funds in the court's budget for such basics.<sup>15</sup>

## **Colorado**

In 2003, the judiciary was required to cut 4% of its budget (or \$7.1 million). As a result, Colorado froze hiring throughout its legal system; mandated eight days unpaid furlough for all court employees; and eliminated 320 staff positions, including clerks, court reporters, and probation officers.<sup>16</sup>

## **Connecticut**

In 2004, Connecticut laid off 232 judicial system employees and froze hiring for courts statewide. Superior courts in Hartford and New Haven postponed hearing nonemergency habeas corpus petitions, which permit individuals to challenge illegal detentions.<sup>17</sup>

## **Delaware**

One reduction included in the \$9 million cut to the courts' 2003 budget was a line item for legal services for the poor, at a cost of \$727,000. The judiciary had to lobby for restoration of the legal services funds, explaining that the Constitution requires the courts to provide counsel to those who cannot afford it themselves. In prior years, courts' budget shortfalls left them unable to pay some court-appointed attorneys for their work, and some criminal trials had to be postponed due to insufficient funds for court-appointed counsel.<sup>18</sup>

## **Florida**

The judiciary's 2003 budget was cut by \$100 million. Faced with a cut of more than one-third of Florida's deputy court administrators, one-fourth of the Supreme Court's legal support staff, and more than one-fifth of the staff at the state courts' administrative office, the Supreme Court's chief justice resorted to begging state lawyers to lobby for court funding. In an e-mail to the bar, he wrote, "I am compelled to ask you, my colleagues, to immediately contact your state representatives and state senators and urge them to save our courts by restoring the extreme budget cuts now contemplated."<sup>19</sup>

## Georgia

In 2004, Fulton County Judge Albert Thompson requested additional funding from the county to hire additional staff to deal with increased caseloads. Instead, the county government asked him to absorb an additional 5% in budget cuts. Thompson then temporarily closed the court. According to District Attorney Paul Howard, the demand for another 5% cut “really [was] reaching the core of whether we can provide quality service in Fulton County.”<sup>20</sup>

## Iowa

In a cost-cutting measure, Iowa county courthouses closed ten additional days in 2005, delaying legal cases and cutting wages for court employees, meaning that the “the public [had] ten fewer days to pay fines, file court documents and conduct other business.” The Chief Judge of the 7th Judicial District said court employees were already stretched thin by staff reductions and were doing all they could to maintain services: “This is a bare-bones operation at this point.... This is serious.” Additional unpaid leave was perceived as preferable to cutting staff in offices that had already been trimmed back. Temporary closings included the Iowa Supreme Court and fifty-six juvenile courts. In addition, the judiciary could not fill vacant staff positions, delayed filling vacant judgeships, and cut back on other expenses. In one county, drug court, felony pretrial conferences, and misdemeanor trials could occur only on Fridays.<sup>21</sup>

## Minnesota

Budget cuts in Minnesota in 2003 forced judges to deal with extremely heavy caseloads. As a result, as reported by Minnesota Supreme Court Chief Justice Kathleen A. Blatz, judges had on average only 120 seconds of court time to spend on each case.<sup>22</sup> To alleviate money shortages, Minnesota courts instituted mandatory unwaivable fees for anyone requiring a public defender. To obtain appointed counsel, people who could not afford to hire their own lawyer nonetheless had to pay \$50 for representation in a misdemeanor case, \$100 in a gross misdemeanor case, and \$200 in a felony case. Ultimately the Minnesota Supreme Court ruled that this fee request was unconstitutional.<sup>23</sup> Minnesota’s budget woes in 2003 also forced the state to cut the budget for its *Guardian Ad Litem* program by 10%. As a result, children in Family Court who were the subjects of paternity disputes, custody evaluations, or parental disputes were left with no one to represent their interests.<sup>24</sup>

Subsequently, in 2004, a convicted child+sex offender was charged with three counts of felony sexual molestation involving a little girl who had been placed in his permanent custody by the courts just months earlier. The court evaluator, who recommended that the

man be granted custody, stated later that he wished the girl could have been appointed a guardian *ad litem*, who could have researched the family history and the girl's wishes and thereby protected her interests.<sup>25</sup>

## **New York**

In 2003, New York's court system was forced to raise fees charged to people seeking to file a claim in court. Such filing and user fees were substantially increased in the Supreme Courts (trial courts of general jurisdiction), County Courts, Surrogate Courts, District Courts, and New York City Civil Courts. Other existing fees were also increased substantially, and a huge array of additional surcharges was imposed in the criminal and traffic courts.<sup>26</sup>

## **North Carolina**

The North Carolina legislature cut the court system's budget from \$317 million to \$304 million (4%) between 2001 and 2004, even as its caseload increased by 11%.<sup>27</sup>

## **Oregon**

In 2003, the budget of Oregon's courts was cut by \$50.5 million. To deal with this crisis, Oregon's chief justice ordered that every courthouse be closed to the public on Fridays, laid off more than 100 court employees, and cut staff hours by 10%. Courts were unable to provide lawyers for poor people in a host of criminal matters and therefore stopped all processing of certain misdemeanor offenses, including prostitution, shoplifting, and all misdemeanor property crimes. Courts also deferred the trials of all felony property crimes involving defendants who could not afford to hire a lawyer. As a result, those arrested for such crimes as car theft and shoplifting were set free because the courts lacked money to process the paperwork or to pay for an attorney to represent these criminal defendants in court. An accused car thief enjoyed a spree during which he allegedly stole five cars from sales lots. He was arrested and released three times in one month because the judicial system lacked resources to provide him with a lawyer and thus could not prosecute him. Another car thief was arrested and released seventeen times.<sup>28</sup>

The year before these dramatic cuts, Oregon's courts had already sustained a succession of budget cuts that resulted in a 27% cut from 2001, and that caused a 30% reduction in staff. The remaining staff took a 10% cut in salary.<sup>29</sup>

The results of a recent inspection of the State Supreme Court and Court of Appeals by an Oregon State Bar committee showed that "10 Court of Appeals judges handle a 'staggering workload' of about 4,000 filings per year," resulting in "most cases being dismissed or

‘affirmed without opinion,’ so lawyers and clients get no legal guidance.” The lack of staff and high workload have often prevented the Supreme Court from accepting constitutionally important cases and resulted in delays in the time it takes for a case to move from filing to issuance of a high court judgment. An editorial complained that Oregon’s appeals courts are “disproportionately underfunded” compared to the state’s executive and legislative branches.<sup>30</sup>

More recently, on just one day in 2005, three criminal defendants in three separate cases were released due to speedy trial violations that prosecutors argued were the result of budgetary constraints.<sup>31</sup>

### **South Carolina**

South Carolina’s courts suffered budget cuts of 8.5% in 2001–2002, 10.5% in 2002–2003, and 9.5% in 2003–2004. To make ends meet, the courts maintained high vacancy rates in courthouses, instituted employee furloughs, cut back supplies, and stopped heating buildings on the weekends.<sup>32</sup> In 2005, South Carolina Supreme Court Chief Justice Jean Toal told the state legislature that the state’s judiciary was in crisis, explaining, “I have wrung every piece of efficiency I can out of this system by using technology and more advanced management techniques.”<sup>33</sup>

### **Utah**

In 2003 and 2004, Utah froze hiring, resulting in the loss of nearly 100 court positions through attrition and layoffs. The state also closed two courthouses.<sup>34</sup>

### **Washington**

As a result of budget shortfalls in 2003, there were an insufficient number of judges to hear cases, and some were not heard promptly. An attorney in Eastern Washington related, “I recently was involved in a civil case that was postponed over two years because the criminal case load had priority. During that period of time, the defendant corporation ceased doing business and became insolvent; all assets were distributed to others and the judgment which was obtained became worthless.”<sup>35</sup> In King County, two district courthouses were forced to close entirely. Washington State Bar Association President Dick Manning declared: “It is as bad in our state as it has ever been.”<sup>36</sup>

Crowded court calendars also delayed criminal trials causing speedy trial violations. In one such case, a violent felon was released from prison, broke into the home of a young mother, and raped her. While fleeing from police, he crashed his vehicle into a motorist, killing the

innocent bystander.<sup>37</sup> In the case of another, a repeat offender was set free after his trial on new charges was postponed repeatedly.<sup>38</sup>

In a separate case, state child welfare officials attempted to permanently remove a three-year-old girl from the custody of her mother, who had drug and other substance abuse problems, so she could be adopted. An overcrowded court calendar and courtroom shortages in Pierce County delayed the trial. New social workers assigned to the case decided to reunite the girl with her mother rather than await trial. Within a year, the girl was kicked to death by her mother, who was then sentenced to thirty years in prison.<sup>39</sup>

## **A Radical Solution: Inherent Powers**

The doctrine of inherent judicial power permits the judicial branch to take necessary actions to fulfill its constitutional functions, even when those actions are not expressly authorized by constitution or statute.<sup>40</sup> For more than a century, judiciaries have used the doctrine in noncontroversial ways, such as permitting photographers access to courtrooms. In a “more muscular” exercise of inherent power, judiciaries have required legislatures to adequately fund and protect their essential functions.<sup>41</sup> The inherent powers doctrine rests on the constitutional notion that the judiciary must remain a separate, effective, and independent branch of government.<sup>42</sup>

A number of state courts have been forced to assert their inherent powers to ensure that basic courtroom functions are funded. In 2002, the Kansas Supreme Court responded to a budget shortfall by increasing existing statewide court fees to supplement a fund for the exclusive use of the judiciary, essentially raising revenue without statutory authorization. The Court described its action as based upon its “inherent power to do that which is necessary to enable it to perform its mandated duties.” Yet, as the carefully worded order acknowledged, such acts are controversial because they might tread on the legislature’s exclusive power to levy taxes or appropriate public monies.<sup>43</sup> To date, Kansas is the only state in which the judiciary has claimed the authority to set a surcharge without some prior explicit statutory authorization.

In 1991, New York’s Supreme Court also invoked inherent powers when it challenged the governor over a ten percent reduction in the judiciary’s requested budget. The state’s Chief Judge called the appropriated budget “unconstitutional,” but eventually settled on only a slight budget increase just days before the case was to be heard by a federal judge.<sup>44</sup>

However, battles over budgets between a state supreme court and a state legislature are rare.<sup>45</sup> More often, inherent powers have secured funding for lower courts, and for very specific budgetary gaps.<sup>46</sup> For instance, an Indiana court required a county council to pay court employees a certain salary, asserting that diminished salaries would impair the efficiency the courts needed to fulfill their constitutional duties.<sup>47</sup> A Wisconsin court demanded that the legislature pay for counsel for an indigent *pro se* defendant in a criminal case.<sup>48</sup> A California trial court appointed a temporary reporter “to prevent the impairment of its efficiency and the necessary conduct of its official functions,” but was limited to paying the reporter’s salary for the first day only.<sup>49</sup>

Despite their value in addressing inadequate funding, the potential political ramifications of these assertions of inherent authority make such actions unappealing for most judges, no matter what budgetary crises exist. Furthermore, by bypassing the legislature—and thus a potential public debate—judges sacrifice alerting the public to the problem and thus a permanent solution may be less likely. One scholar even recommended that judges close their courtrooms and release defendants rather than invoke “inherent powers,” so that the public becomes aware of the budgetary crisis.<sup>50</sup>

## Mechanisms for Ensuring Adequately Funded Courts

To avoid such constitutional showdowns between the judiciary and the legislature, some states have instituted mechanisms for protecting the judiciary’s budget. There are five general approaches, some more effective than others: (1) giving the judiciary control over its own internal administration and governance; (2) mandating a certain formula or system for determining the level of court funding; (3) forbidding the executive from reducing the judicial appropriations request; (4) allowing the judiciary to submit its budget request directly to the legislature; and (5) forbidding the legislature from reducing the judicial appropriations request.

### 1. Judicial Control of Internal Management and Administration

Protecting the judiciary’s power to prepare its own budgets and administer the court system is a common way to address concerns about budget cuts that affect courts’ ability to do justice. Although most state constitutions guarantee this power, its contours vary from state to state.<sup>51</sup>

In some states, a central court or administrator prepares the budgets for all of the courts in the state. In others, each court in the state advises a central authority about its budgetary

needs and administers its own duties.<sup>52</sup> Similarly, most state judiciaries exercise independent control over their internal administration, thus giving them some ability to protect their core mission of providing access to justice, and shielding them to some extent from legislative or executive branch decisions based on different priorities.<sup>53</sup>

Judiciaries with independent control over their own budgets and administration can use innovative cost-cutting measures or retain some control over difficult choices, thus helping to ensure that the goal of access to justice is met. For example, they may be able to transfer money between various accounts, departments, and courts to alleviate critical shortages. In California, the Judicial Council (an administrative body consisting of the Chief Justice and appellate and trial judges) has the power to allocate the judicial appropriation as it sees fit, so long as it guarantees “access to justice to citizens of the state.”<sup>54</sup>

## **2. Mandatory Formulas for Judicial Funding**

Statutes or constitutional provisions mandating a specific formula for a judicial appropriations request can be highly effective in ensuring consistent, predictable funding for state courts. Such formulas are designed to guarantee that the judiciary receives a set portion of the state budget. Although state courts are still susceptible to overall changes in spending, this system protects the judiciary against disproportionate budget cuts. Additionally, this scheme makes it far more difficult for an angry legislature to punish the courts for an unpopular ruling.<sup>55</sup>

## **3. Restrictions on Executive Power over the Judiciary's Budget**

In many states, the executive prepares the annual budget, based on requests by the various state agencies. The governor may modify these requests before submitting the proposed budget to the legislature. Often, the judiciary is considered a state agency for this purpose.

Many states permit the executive to reduce judicial branch budget requests.<sup>56</sup> In states that permit the executive to modify the judicial branch budget, governors do so more than fifty percent of the time.<sup>57</sup> Some experts believe that “[r]educing the funding of the judiciary in the executive budget, meaning reducing judicial requests, appears to be used more than any other gubernatorial budget power to influence court rulings and policies,” thus creating a risk to judicial independence.<sup>58</sup>

Perhaps in recognition of this risk, the National Center for State Courts reported that in 2004 there were thirty-one states that prohibited the executive from amending the judicial budget request either by statute or by constitution.<sup>59</sup> However, the judiciary, like any other body requesting a legislative appropriation, must engage in political negotiation and

wrangling for its appropriation. Thus, any restrictions on the executive branch's power over the courts' budget requests protect the courts more in the abstract than in practice.

#### **4. Submission of Budget Requests Directly to the Legislature**

Some states do not restrict the executive from modifying the judicial appropriations request. Instead, the judiciary simply submits its budget request directly to the legislature.<sup>60</sup> However, in many of these states, a judicial request directly to the legislature is only advisory, since the legislature considers only the budget proposal submitted by the governor. In such cases, therefore, the restrictions on the governor described above are far more important than the judiciary's power to submit its budget request to the legislature.<sup>61</sup>

#### **5. Restrictions on Legislative Power Over Courts' Appropriations Requests**

Legislatures that are permitted to amend the judicial branch budget do so more than ninety percent of the time.<sup>62</sup> Some states, either by statute or pursuant to the state's constitution, prohibit the legislature from decreasing the judiciary's budget.<sup>63</sup> West Virginia has both a constitutional *and* a statutory prohibition, thus apparently guaranteeing the judiciary whatever level of funding it requests. No other state has granted the judicial branch such broad independence in financial matters.<sup>64</sup>

However, it is unclear whether such a scheme truly mandates a legislature to honor any judicial budget request under any circumstances. First, the enforceability of such schemes has never been tested. If there have been any violations of prohibitions on legislative power to amend judicial branch budgets, no legal challenges have been made. Second, as in states in which the judiciary's budget request is made through the executive, the judiciary must still negotiate with the executive and legislature about the actual amount to be appropriated. And other political checks—such as the possibility of salary reductions under certain circumstances, and the fact that judges may stand for popular election—operate to ensure that the courts remain flexible on budget matters.<sup>65</sup>

Thus, to whatever degree restrictions on the legislature's power appear to protect judicial independence, these restrictions may be more abstract than real. Nonetheless, "legislative budgeting powers pose a much greater risk to judicial independence than gubernatorial budgeting powers."<sup>66</sup> Therefore, preventing the legislature from amending the judicial budget appears to be the most important of the five protections in safeguarding judicial independence.

## Conclusion

In recent years, a profound fiscal crisis has led states across the country to make drastic funding cuts and reductions to the operations of their judicial systems. These cuts have taken a heavy toll on the ability of our country's courts to fulfill their constitutional mission of providing access to justice and protecting constitutional rights and liberties. While some states have instituted mechanisms for helping the judicial branch to secure and maintain sufficient funding, many others have not. Moreover, none of these mechanisms alone is enough to ensure that courts remain able to perform their important duties.

The Constitution Project calls on legislatures to ensure both that judiciaries have the funding necessary to fulfill their constitutional obligations and that all individuals have meaningful access to our courts. Because the judicial branch is dependent on the legislative and executive branch for survival, these other branches must, in order to meet this call, affirmatively recognize the critical role that courts play in the everyday lives of individuals and ensure that courts have the resources available to fulfill this role. Otherwise, our Constitution, and the rights and protections it provides, will suffer in ways America simply cannot afford.

## APPENDIX: RESEARCH AND RESOURCES

### Academic Resources

Despite the clear effects the state budget process has on state court systems' ability to function, there is surprisingly little scholarly research or literature on the subject. The two academics who have produced the greatest body of work in this area are Dr. Roger E. Hartley, of the University of Arizona's School of Public Administration and Policy, and Dr. James W. Douglas, of the Department of Government and International Affairs at the University of South Carolina.

Here is a list of work produced by Professors Douglas and Hartley, including a brief descriptive passage excerpted from each article:

- James W. Douglas and Roger E. Hartley, *Making the Case for Court Funding: The Important Role of Lobbying*, *Judges Journal* (July 2004).

“Bad economic conditions have forced courts at all levels to tighten their belts in recent years.... Even during good times advocates of the courts often complain that the judiciary is underfunded. Insufficient resources result in large backlogs, staff layoffs, eliminated programs, long delays for civil cases, and even court shutdowns.... Such outcomes diminish the quality of justice. The judicial branch, therefore, needs to adopt strategies that will help ensure an adequate flow of resources to the courts. In this article, we draw upon the academic literature on judicial budgeting to suggest that more aggressive lobbying tactics by the courts might enable them to better advance their budgetary prerogatives.”

- Roger E. Hartley, *State Budget Politics and Judicial Independence: An Emerging Crisis for the Courts as a Political Branch*, 18 *The Court Manager*, Issue 4 (2004).

“This paper focuses on the importance of budget politics to the administration and independence of state courts. Research suggests that state courts face unusual difficulties in the budget process. On one hand, court officials and judges want to remain outside of or ‘above politics’ in order to protect and to perpetuate their neutrality. However, research suggests that courts, like executive agencies, must

behave politically and actively in order to have success in the budget process. This 'catch 22' suggests a renewed focus on budget behavior and institutions by court officials and scholars.... Indeed, given the 'catch 22,' political movements to change budget institutions and to protect judicial independence may make courts appear self-interested and more political. Alternatively, budget success may hinge on courts behaving more politically and aggressively in the process rather than by focusing on major institutional changes. This paper will consider budget behavior in light of the recent budget crisis.... What little research there is, however, suggests that court officials should consider emulating the political strategies used by executive agencies and interest groups in order to increase success."

- James W. Douglas and Roger E. Hartley, *Sustaining Drug Courts in Arizona and South Carolina: An Experience in Hodgepodge Budgeting*, 25 *The Justice System Journal*, No. 1 (2004).

"This study examines how drug courts are initially funded at the local level and how they behave in the game of budget politics to maintain themselves over time.... We begin this project with an inductive examination of drug courts using elite interviews of individuals who were instrumental in adopting and implementing drug courts in Arizona and South Carolina. We asked how drug courts were funded initially, how officials planned for resources over time, and how funding sources changed. Our findings suggest that drug courts engage in a "hodgepodge" budgeting strategy that seeks and secures resources from a variety of sources. This search for funding may affect their ability to effectively implement their programs, minimize program impact, and hinder the institutionalization of drug courts in the justice system."

- James W. Douglas and Roger E. Hartley, *The Politics of Court Budgeting in the States: Is Judicial Independence Threatened by the Budgetary Process?* 63 *Public Administration Review*, No. 4 (July/August 2003). Presented at the 73rd Annual Meeting of the Southern Political Science Association, Atlanta, Georgia, November 7–10, 2001.

"Judicial independence in American politics has been hailed as a means of preserving individual liberty and minority rights against the actions of the majoritarian branches of government. Recently, however, legal professionals and scholars of the courts have begun to question the magnitude of judicial independence, suggesting that budgeting and finance issues pose a threat to judicial independence. This article explores whether state judiciaries are being threatened on this front by soliciting the perceptions of key state officials. Using surveys of court administrators, executive budget officers, and legislative budget officers in the states, we examine three aspects of the politics of judicial budgeting: competing for scarce resources, interbranch competition,

and pressure to raise revenues. The survey responses suggest that, in a substantial number of states, judicial independence has, at times, been threatened by interbranch competition and pressures to raise revenues.”

- James W. Douglas, *Court Strategies in the Appropriations Process: The Oklahoma Case*, Academics Press (2002).

“Little is known about the strategies used by state courts during the appropriations process. This article examines court budgetary practices in the state of Oklahoma. It reveals how court funding works in Oklahoma, what strategies are used by the state courts, and which factors are most important in determining the success of the courts in getting the funds they need. It shows that the judiciary is not necessarily at the mercy of the other branches of government when seeking resources. The findings provide the first glimpse at court budgeting strategies and determinants of these strategies’ success at the state level.”

- James W. Douglas and Roger E. Hartley, *State Court Budgeting and Judicial Independence: Clues From Oklahoma and Virginia*, 33 *Administration & Society*, No. 1 (March 2001).

“Perceived assaults on the independence of the judiciary have called new attention to how courts obtain their funding... However little scholarly activity has surrounded the question of how courts negotiate the politics of budgeting in state arenas. Expanding our knowledge in this area is necessary if we are to understand fully how budgeting affects the ability of the judiciary to effectively play its vital role as an independent branch in American government. Through the use of elite interviews with state court administrators, executive budget officers, and legislative budget analysts in Oklahoma and Virginia, this article examines whether the independence of state courts is under assault by budgetary politics. Our evidence questions whether state executive and legislative powers of the purse pose serious threats to the independence of courts.”

- James W. Douglas and Roger E. Hartley, *State Court Strategies and Politics During the Appropriations Process*, *Public Budgeting & Finance* (Spring 2001).

“This article explores state court budgetary strategies and their effectiveness in the appropriations process as perceived by key budgeting actors. In general, we find evidence of state judiciaries that try to remain ‘above politics’ when dealing with budget issues. The most important strategies to this effect include submitting realistic requests, providing documentation to support needs, and not using budget ‘weapons’ at their disposal (*e.g.*, writs of mandamus). However, the survey results do indicate that

state judiciaries use certain strategies that have a more political tint, such as lobbying by court officials.”

Professors Hartley and Douglas also maintain what is probably the most comprehensive “library” of scholarly literature on the issue of state court budgets and judicial independence. It includes the following articles from other sources:

- Frances Kahn Zemans, *Court Funding*, Briefing paper, American Bar Association Standing Committee on Judicial Independence (August 2002).

“There is significant potential for court funding to affect judicial independence in a variety of ways. The amount of money granted, the budget process, the flexibility allowed in expensing the budget, and even the withholding of appropriations in response to court decisions are all legitimate concerns for those committed to the rule of law and an independent judiciary on which it depends.... The overview...is designed to provide background information on court funding to the Standing Committee on Judicial Independence and the ABA Commission on the 21st Century Judiciary. The paper will cover the basics of court funding, outside influences on court expenses, alternative revenue sources, judicial independence and accountability, and the potential for reform.”

- Howard B. Glaser, *Wachtler v. Cuomo: The Limits of Inherent Powers*, 78 *Judicature*, No. 1 (July–August 1994).

“The confrontation was spawned by New York’s grim fiscal condition when the governor, four weeks after his swearing in, announced unprecedented budget cuts throughout state government, including the court system. The chief judge responded with a lawsuit asserting that the judiciary had the ‘inherent power’ to compel the executive and legislative branches to fund the state court system at a judicially mandated level of almost \$1 billion. The doctrine of inherent powers holds that the very existence of the courts implies their authority to exercise power necessary to the performance of judicial functions. Though the doctrine has been employed by American courts for various purposes since the beginning of the 19th century, *Wachtler v. Cuomo* was significant in several ways. It marked the first substantial use of the doctrine by a state high court against an equal branch of government. The billion-dollar budget at the center of the conflict dwarfed previous inherent powers conflicts. The lawsuit represented an unprecedented application of inherent powers to lump-sum finding, as opposed to the discrete line-item expenditures at issue in prior cases.... It is particularly important to consider the implications of *Wachtler v. Cuomo* at a time when state court budgets around the country are tightly squeezed by fiscal pressures,

tempting besieged judges and court administrators into increased use of inherent powers to address chronic budget shortfalls.”

- Carl Baar, *The Continuing Development of the Inherent Powers Doctrine*, 78 *Judicature*, No. 1 (July–August 1994). (Adapted from *Inherent Powers: Trends and Prospects*, the Introduction to *Inherent Powers of the Courts: Sword and Shield of the Judiciary*, Stumpf, National Judicial College, 1994).

“While the inherent powers doctrine has always focused on the importance of judicial independence, case law now recognizes the necessary link between independence and impartiality. On the one hand, judicial independence is a condition for judicial impartiality. Conversely, a number of state courts now recognize that inherent powers, when invoked to reinforce independence of the judiciary, must be dealt with through a process considered impartial by the public and government officials alike. Even the pioneering states of a generation ago, Colorado and Pennsylvania, have confined the discretion of trial judges to give ex parte orders in budding disputes.”

Early scholarly work on budgetary impacts on judicial independence focused virtually exclusively on the federal judiciary. While the fiscal issues confronting state courts often differ vastly from those facing their federal counterparts, significant similarities exist, particularly with regard to the political dynamics involved. The following list of earlier “federal courts” literature is thus instructive when analyzing problems at the state level:

- Eugenia Froedge Toma, *Congressional Influence and the Supreme Court: The Budget as a Signaling Device*, 20 *The Journal of Legal Studies* (January 1991).

“Congress can use the budget as a device for signaling its own preferences and for rewarding or penalizing the agencies for their activities. To the extent the agency members value budgetary rewards, they will respond to the legislative signals by changing their behavior in the direction desired by the legislative body. The role of the budget as a signaling device has not been applied to the judiciary. Instead, economic analysis of the judiciary and, in particular, of the Supreme Court, has generally focused on the institutional features that foster independence of the Court. Congress, however, appropriates an annual budget to the federal judiciary in the same manner that it appropriates a budget to other agencies. Given that Congress has this control device, an obvious question is whether it uses the budget to signal preferences to the Supreme Court and to make it subject to political influences. This article extends the congressional influence thesis to the federal judiciary and, in particular, to the Supreme Court. I shall examine whether Congress uses the budget as a signaling device to the Supreme Court. Section II examines the institutional relationship

between the Court and Congress and outlines the relevance of the budgetary influence thesis for the judiciary....”

- Thomas G. Walker and Deborah J. Barrow, *Funding the Federal Judiciary: The Congressional Connection*, 69 *Judicature*, No. 1 (June–July 1985).

“A substantial amount of scholarly commentary has focused on the judicial system’s reliance on the executive branch for enforcement of court rulings, but relatively little has been written on the ways in which federal judges must interact with the legislative branch to obtain adequate funding for the operations of the court system. The purpose of this article is to explore the congressional/judicial relationships that result in appropriations for the federal judiciary, with a particular focus on the process as it pertains to the lower courts.”

- Dean L. Yarwood and Bradley C. Canon, *On the Supreme Courts Annual Trek to the Capitol*, 63 *Judicature*, No. 7 (February 1980).

“A sidelight on how the justices make their appeal to Congress each year for the high court’s appropriation.”

## American Bar Association Resources

In November 2003, then-ABA President Dennis Archer announced the formation of the ABA Commission on State Court Funding, chaired by New Hampshire Supreme Court Justice Joseph C. Nadeau. At the time, he noted that the Commission would “study innovative approaches to funding the courts” and make recommendations for how states can maintain adequate resources to meet their responsibilities. The Commission was also instructed to perform its analysis and make its recommendations in part by building on the related issues identified in *Justice in Jeopardy*, a report by the ABA Commission on the 21st Century Judiciary. At the ABA’s Annual Meeting in August 2004, the organization’s House of Delegates adopted the recommendations of the Commission on State Court Funding, and they have thus become official ABA policy. These recommendations include principles that states should follow in establishing judicial budgeting procedures and guidelines for helping courts and judges maintain adequate funding. The full set of recommendations can be found at: [http://www.abanet.org/jd/court\\_funding/pdf/report\\_with\\_rec.pdf](http://www.abanet.org/jd/court_funding/pdf/report_with_rec.pdf).

Additionally, the ABA Standing Committee on Judicial Independence, in collaboration with the ABA’s Judicial Division, produced a “State Court Funding Crisis Toolkit,” which

is available at <http://www.abanet.org/jd/courtfunding/home.html>. According to the website of the Standing Committee on Judicial Independence: “A large part of that [judicial] independence lies in courts having consistent, adequate funding to deliver justice. As part of this initiative, the ABA has compiled a toolkit to serve as a resource for state and local bars and others addressing the challenges raised by current fiscal constraints.” It includes a model OpEd, speech, and talking points; a list of resources for courts and activists; a briefing paper analyzing existing research; and recommendations for building community support. The interactive feature is also interwoven with the recommendations of both the ABA’s Commission on the 21st Century Judiciary and the Commission on State Court Funding, as well as established ABA policies. Among the many resources available in the toolkit is a comprehensive list of news clips, budgetary reports, and other data from all fifty states, available at [http://www.abanet.org/jd/courtfunding/resources\\_statelocal.html](http://www.abanet.org/jd/courtfunding/resources_statelocal.html), which includes hyperlinks for those items that are available online.

The ABA’s Judicial Division has also published a collection of articles addressing state court funding in its quarterly magazine, *The Judges Journal*. That collection, entitled *Justice in Jeopardy: The State Court Funding Crisis*, includes articles advising judges and courts how to negotiate budgets and safeguard court funds and provides case studies from select states.

## National Center for State Courts Resources

The National Center for State Courts (NCSC) has created a comprehensive set of online resources on budgeting issues for state court judges, administrators, and staff. The main page may be found at: [http://www.ncsconline.org/D\\_Comm/BudgetPage.htm](http://www.ncsconline.org/D_Comm/BudgetPage.htm). The site includes an “Action Plan” for state courts; a “Topical Database” that includes “reports, white papers, overviews, bibliographies, state links, and frequently asked questions;” and links to outside reports and resources, including alternative sources of funding, such as grant providers. Most resources are distributed among four sections, each devoted to a specific set of topics: “Budget Processes,” “Funding State Courts,” “Court Costs: Fees, Miscellaneous Charges, and Surcharges,” and “Collection of Fines and Costs.” Each module includes an overview, a resource guide, answers to frequently asked questions, and a list of relevant NCSC documents. The latter two sections deal specifically with fees, fines, surcharges, and collections, and are aimed primarily at judges and administrative staff. The first two sections provide detailed policy discussions and resource lists on the wide array of fundamental issues related to state court budgets, and are aimed primarily at members of the bench and bar, state court administrators, legislative- and executive-branch officials, policy analysts, the media, and anyone involved in or affected by the budgeting process.

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## ENDNOTES

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- 1 G. Gregg Webb & Keith E. Whittington, *Judicial Independence, the Power of the Purse, and Inherent Judicial Powers*, 88 JUDICATURE 12, 14 (2004).
- 2 The Constitution Project is an independent think tank that promotes and defends constitutional safeguards by bringing together liberals and conservatives who share a common concern about preserving civil liberties. By forging consensus positions that bring together “unlikely allies” from both sides of the aisle, the Project broadens support for constitutional protections both within government and in the public at large. The Project sponsors a variety of initiatives that are guided by bipartisan committees of current and former judges, policymakers, law enforcement officers, scholars, business leaders, and other experts.
- 3 The current report is a product of our Courts Initiative staff, not the Task Force, which has not been reconvened since 2000. However, this report could not have been produced without the help of others outside of our offices. We sincerely thank the law firm of Crowell & Moring for its invaluable research and writing assistance. In particular, we thank Crowell & Moring summer associate Ramey Ko, associate Julie Harris, and partner Ridge Hall. The Constitution Project also thanks student interns Jennifer Reid and Sophia Smith-Savedoff for their research support. Finally, we thank former Courts Initiative Director Barbara Reed, University of Arizona Professor Roger Hartley, and Seth Anderson at the American Bar Association, for their contributions to this report. The Constitution Project is also deeply grateful to the Open Society Institute and the Deer Creek Foundation for their support of our Courts Initiative over the years.
- 4 *Statement of the Coalition to Defend Checks and Balances*; An Initiative of the Constitution Project, March 16, 2006, available at [http://www.constitutionproject.org/pdf/Separation\\_of\\_Powers\\_Statement\\_03\\_16\\_2006.pdf](http://www.constitutionproject.org/pdf/Separation_of_Powers_Statement_03_16_2006.pdf).
- 5 *Christopher v. Harbury*, 536 U.S. 403, 415 n.12 (2002) (citations omitted); *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965); *Windsor v. McVeigh*, 93 U.S. 274 (1876). See also *Barry v. Barchi*, 443 U.S. 55, 66 (1979); *Matthews v. Eldridge*, 424 U.S. 319, 333 (1976). Historically, this right to access has most often been applied in the context of prisoners deprived of access to court preparation materials. See *Bounds v. Smith*, 430 U.S. 817 (1977); *Lewis v. Casey*, 518 U.S. 314 (1996). However, its use has more recently been extended to a wide variety of cases, including the application of the Americans with Disabilities Act to local courts and the requirement that court fees not prohibit indigent petitioners from accessing the courts. See *Tennessee v. Lane*, 541 U.S. 509 (1994) (affirming Congress’s right to require courts to accommodate individuals with disabilities based on its ability to enforce constitutional rights such as the right of access); *Walters v. National Ass’n. of Radiation Survivors*, 473 U.S. 305 (1985) (ensuring fee barriers to the courts are not oppressively high); *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508 (1972) (regulating legislation restricting certain parties from the right to petition a court); *Griffin v. Illinois*, 351 U.S. 12 (1956) (ensuring every citizen is treated equally before the court). The right is also increasingly an issue in cases involving non-English speaking citizens. See, e.g., *United States ex rel. Negron v. State of New York*, 434 F.2d 386, 390–91 (2nd Cir. 1970) (holding that a trial court must make it unmistakably clear to a defendant who has obvious trouble with the English language that he has the right to an interpreter for his trial, “at state expense if need be”).
- 6 See, e.g., OR. CONST. art. I, §10: “No court shall be secret, but justice shall be administered, openly and without purchase, completely and without delay, and every man shall have remedy by due course of law for injury done in him in his person, property, or reputation.”
- 7 One of the greatest obstacles to sufficient court funding may indeed be one of perception. The public, the media, and executive and legislative branch officials far too often confuse the constitutional status of the judicial branch with that of a state agency. On the part of the public, this is understandable. Studies show that most citizens do not have a clear understanding of America’s three-branch system of government, the concepts of separation of powers and checks and balances, or the role and function of the courts. To some degree, the

media also may be excused for its failure to recognize and make explicit this difference. The complexities of constitutional infrastructure are not likely to be a regular part of most reporters' beats, and they are often constrained by tight deadlines, column-inch limitations, and the blue pencils of editors. However, such failures on the part of legislative- and executive-branch officials cannot be dismissed as either understandable or unimportant, even when driven by ignorance rather than malice. Whether unintentional or intentional, officials' "confusion" of the judicial branch with a mere agency results in the systematic marginalization of the important role courts play in our democratic society and in citizens' everyday lives.

- 8 Daniel J. Hall, Robert W. Tobin, & Kenneth G. Pankey Jr., *Balancing Judicial Independence and Fiscal Accountability in Times of Economic Crisis*, 43 THE JUDGES JOURNAL, No. 3 (Summer 2004) at 5; Frances Kahn Zemans, *Court Funding*, American Bar Association, Standing Committee on Judicial Independence (August 2003), available at [http://www.abanet.org/jd/court\\_funding/pdf/court\\_funding.pdf#search='Zemans%2C%20Court%20Funding%2C%20American%20Bar%20Association%2C%20Standing%20Committee%20on%20Judicial%20Independence'](http://www.abanet.org/jd/court_funding/pdf/court_funding.pdf#search='Zemans%2C%20Court%20Funding%2C%20American%20Bar%20Association%2C%20Standing%20Committee%20on%20Judicial%20Independence'). See also Elizabeth C. McNichol & Iris J. Lav, *State Revenues and Services Remain Below Pre-Recession Levels*, Center on Budget and Policy Priorities, December 6, 2005, available at <http://www.cbpp.org/12-6-05sfp2.htm>; Elizabeth McNichol, *State Fiscal Crisis Lingers: Cuts Loom Large*, Center on Budget and Policy Priorities, February 15, 2005, available at <http://www.cbpp.org/12-8-04sfp.htm>. The nonpartisan Center on Budget and Policy Priorities (CBPP), a Washington, D.C.-based think tank that performs independent research and analysis on economic and substantive policy matters that affect the country at all levels of government, has published a wide array of studies documenting the grim fiscal realities facing the states.
- 9 Zemans, *supra* note 8, at 3.
- 10 In Illinois, for example, the courts comprise only one percent of the state budget. John Patterson, *Court Says Judges Should Get Pay Raises; State Justices Say Blagojevich Can't Eliminate Scheduled Salary Increases*, CHI. DAILY HERALD, May 21, 2004, at n.17.
- 11 The ability of the judicial branch to carry out its constitutional duties is threatened by fiscal shortfalls in three general categories. The first category includes the practical functions of courts themselves, such as compensation for judges, sufficient numbers of judges and staff to manage the case loads effectively, and adequate hours, security, and supplies. The second category includes special services provided by courts to ensure individuals' meaningful access to justice, such as guardian *ad litem*s, interpretive services, and alternative dispute programs. The third category includes agencies and activities that are often funded through the judiciary's budget, such as public defenders and other counsel for indigent litigants, and probation and parole officers. As described below, funding shortfalls in any of these categories may create a chain reaction that affects the judicial branch's ability to perform their constitutionally prescribed duties.
- 12 This is a growing problem in the federal courts, as well. While Congress mandates annual wage increases to court staff, the pay hikes have not been funded, forcing courts to take money from operations in other areas or reduce staff numbers through layoffs, attrition, and retirement. At least 36 district and bankruptcy courts have curtailed office hours in 76 locations nationwide in the last two years. Some have closed office branches altogether; others have cut back hours at the beginning and end of each day. All the while, federal courts' case loads are increasing steadily. Pamela MacLean, *Federal Courts Trim Back Hours Across the United States*, NAT'L L.J., October 10, 2005. See also, Patricia Manson, *Judiciary Facing Critical Budget Problems*, CHI. DAILY L. BULL., April 23, 2005, at 7 (explaining that the federal court system has tightened its belt through measures that include imposing a moratorium on construction or expansion of 42 courthouses and cutting back on drug testing and drug treatment for convicted felons released from prison).
- 13 A guardian *ad litem* is a special guardian appointed by the court to prosecute or defend, on behalf of an infant or incompetent, a suit to which that infant or incompetent is a party, and such guardian is considered an officer of the court to represent the infant or incompetent in the litigation. BLACK'S LAW DICTIONARY 362 (5th ed. 1983).

- 14 See Scott Marshall, *Court Interpreters Stop Working for One Day*, N. COUNTY TIMES, May 15, 2005 (explaining the ramifications of pay cuts to court interpreters).
- 15 Lisa Stansky, *The Big Squeeze: State Legal Systems are Feeling the Pain of Tight Budgets*, NAT'L L.J., May 19, 2003; David L. Hudson, Jr., *Cutting Costs...and Courts: Judicial Resources Dwindle as States Cope with Budget Crisis*, 89 A.B.A.J. 16 (April 2003).
- 16 Hudson, *supra* note 15; see also Stansky, *supra* note 15.
- 17 Hudson, *supra* note 15.
- 18 Darrel W. Cole, *Restoration of Court Funding Needed to Meet Federal Service Requirements*, DEL. L. WKLY, March 26, 2003, at D3.
- 19 Stansky, *supra* note 15. See also Julie Kay, Aixa Montero, & Lubitz Gelber, *Justice Lite: Governor's Spending Plan Cuts Wide Swath Through Prosecutions, Death Penalty Appeals, Early Intervention*, BROWARD DAILY BUS. REV., February 20, 2003, at A1.
- 20 Ernie Suggs & Ben Smith, *Courts Shut in Budget Dispute; Fulton Judge Irked by County Request to Cut Back 5%*, THE ATLANTA JOURNAL-CONSTITUTION, September 4, 2003, at 4C.
- 21 Todd Ruger, *Iowa Courts to Close for 10 Single Days Next Year*, THE QUAD-CITIES TIMES, July 21, 2004.
- 22 Chief Justice Kathleen A. Blatz, *2003 State of the Judiciary*, Minn. State Bar Association Annual Convention, June 20, 2003, available at <http://www.courts.state.mn.us/news/posting.aspx?ID=20244&pageID=132>. See also Stansky, *supra* note 15.
- 23 Leonard Post, *Lean Times for State Courts Get Leaner Still*, NAT'L L.J., December 6, 2004. See also *Minn. v. Tennin*, 674 N.W.2d 403 (2004).
- 24 *Open Letter to GALS from Chief Justice Blatz*, Minn. State Guardian Ad Litem Update Newsletter (Fall 2003). See also Judson Haverkamp, *Lean Times for Minnesota Courts*, 60 BENCH & BAR OF MINN. 4 (April 2003).
- 25 *Judge Criticized for Giving Custody of Girl to Convicted Sex Offender*, Associated Press, November 20, 2004, available at [http://wcco.com/topstories/local\\_story\\_324123228.html](http://wcco.com/topstories/local_story_324123228.html).
- 26 Hon. Jonathan Lippman, *New York's Efforts to Secure Sufficient Court Resources in Lean Times*, 43 THE JUDGES JOURNAL, No. 3 (Summer 2004).
- 27 John Medlin & Rhoda Billings, *Judicial Independence Requires More Resources and Greater Management Flexibility*, N.C. ST. B.J. (Summer 2003).
- 28 Stansky, *supra* note 15; Hall, Tobin, & Pankey, *supra* note 8, at 6. See also Post, *supra* note 23.
- 29 Post, *supra* note 23.
- 30 Robert Landauer, *Short Rations Starve Appeals Court*, OREGONIAN, September 5, 2004.
- 31 *State v. Adams*, 2005 WL 1838513 (Or. 2005); *State v. Johnson*, 2005 WL 1838442 (Or. 2005); *State v. Davids*, 2005 WL 1838453 (Or. 2005).
- 32 Post, *supra* note 23.
- 33 Bruce Smith, *Toal Asking for Six Judges to Help With Crisis in Courtrooms*, STATE (Columbia), January 21, 2005.
- 34 Hudson, *supra* note 14.

- 35 Court Funding Task Force, Board for Judicial Administration, *Justice in Jeopardy: The Court Funding Crisis in Washington State* (December 2004), at 36.
- 36 Stansky, *supra* note 15.
- 37 Court Funding Task Force, *supra* note 35, at 4.
- 38 *Id.* at 34.
- 39 *Id.* at 20.
- 40 Webb & Whittington, *supra* note 1, at 14.
- 41 *Id.*
- 42 See Jeffrey Jackson, *Judicial Independence, Adequate Court Funding, and Inherent Judicial Powers*, 52 MD. L. REV. 217, 227 (1993).
- 43 Webb & Whittington, *supra* note 1, at 18.
- 44 *Id.*
- 45 *Id.* at 16.
- 46 *Id.*
- 47 See *McAfee v. State ex rel. Stodola*, 284 N.E.2d 778 (1972).
- 48 See *Supreme Court of Wisconsin v. Lehman*, 137 Wis.2d 65 (1987).
- 49 See *Rappaport v. Payne*, 139 Cal. App. 772 (1934).
- 50 See Jackson, *supra* note 42, at 251.
- 51 G. Alan Tarr, *The State Judicial Article*, Center for State Constitutional Studies, available at <http://www-camlaw.rutgers.edu/statecon/judicial.pdf#search='G.%20Alan%20Tarr%20The%20State%20Judicial%20Article'>.
- 52 In Iowa, for example, “the supreme court shall prepare an annual operating budget for the judicial branch, and shall submit a budget request to the general assembly for the fiscal period for which the general assembly is appropriating funds.” Iowa Code § 602.1301(1) (2005). North Dakota similarly provides that “the state court administrator shall submit a comprehensive budget for the supreme court and district courts to the legislative assembly.” 2005 N.D. Laws § 27-01-01.1. Massachusetts statutes provide that the chief justice of the supreme court and the “chief justice for administration and management” will prepare the supreme court’s budget in tandem. Mass. Gen. Laws ch. 211, § 2A (2005). Washington has adopted a similar scheme: the court administrator prepares an annual budget under the guidance of the chief justice. However, in Maryland, each court controls its own budget: “the clerk of each circuit court shall submit annually a budget for the review and approval of the Chief Judge of the Court of Appeals.... [E]ach budget shall be included in the State budget as part of the budget for the Judicial Branch of State government as submitted by the Chief Judge of the Court of Appeals.” 2005 Md. Laws § 2-504.1. Often, statutes or a state constitution will vest administrative control in the chief justice or in an administrative assistant. New York law calls for a “chief administrator to the courts” “to supervise the administration and operation of the unified court system” on behalf of the chief judge. New York § 212 (2005). The Alaska Constitution states that the chief justice is the administrative head of the judiciary and that “[t]he chief justice shall with the approval of the supreme court appoint an administrative director to serve at the pleasure of the supreme court and to supervise the administrative operations of the judicial system.” Alaska Constitution Article IV, Section 16. Massachusetts statutes provide that the chief justice of the supreme court and the “chief justice for administration and management” will prepare the supreme court’s budget in tandem. Mass. Gen. Laws ch. 211, § 2A (2005). Washington has

- adopted a similar scheme: the court administrator prepares an annual budget under the guidance of the chief justice. RCW 2.56.030 (2005).
- 53 Most internal administration and management authority is relatively uncontroversial. More controversial is the court's ability to set fees and surcharges (such as in the Kansas example described above). Webb & Whittington, *supra* note 1, at 18.
- 54 Cal. Gov. Code § 77202(b) (2005).
- 55 One of the few, if not the only, states that uses this method is California. California's Code stipulates that an automatic funding adjustment is applied to the court budget every year based on the annual "State Appropriations Limit" (SAL). Cal. Gov't Code § 77202(a) (2005). The SAL is a percentage that reflects growth in the state, based on a formula using the Consumer Price Index, population growth, productivity change, and other factors. In the past, the legislature's budget was guaranteed a minimum annual increase based on the SAL. In 2004, the California Assembly passed Senate Bill 1101, granting the same right to the judiciary. The guaranteed change is a base funding adjustment, and additional appropriations may be requested. Cal. Gov't Code § 77202(a)(2) (2005). However, it remains somewhat unclear if the automatic funding adjustment is absolutely binding on the final budget passed by the legislature or merely included in the initial appropriations request. So far, the legislature has treated the provision as binding, but with only one year of operation and improving economic conditions in the state, it is difficult to tell how the legislature might react in the future. Currently, there is an effort to amend the California Constitution to include a more explicitly binding form of this provision.
- 56 Among these are Alabama, California, Connecticut, Delaware, Indiana, Kansas, Massachusetts, Nebraska, New Jersey, North Carolina, Oklahoma, Pennsylvania, South Carolina, Tennessee, Utah, Virginia, and Wisconsin.
- 57 The governor of Rhode Island, for example, cut the judiciary's \$71 million budget request by \$2.9 million. These cuts specifically affected Family Court, Drug Court, and Justice Link, a statewide criminal information system. *State of the Judiciary 2004: Backup Data and Source Cites*, available at [www.courts.state.ri.us/Source\\_Cites-SOJ\\_2004.htm](http://www.courts.state.ri.us/Source_Cites-SOJ_2004.htm). New York allows the governor to make "such recommendations as he may deem proper." N.Y. Const. art. VII, § 1.
- 58 James Douglas, *Court Strategies in the Appropriations Process: The Oklahoma Case*, J. PUB. BUDGETING ACCT. & FIN. MGMT. 117, April 2002, at 5. Yet, when the executive's budgetary powers are weak, requiring the judiciary to submit its budget to the executive is no requirement at all. For example, in Oklahoma, the Chief Justice is required to submit the judiciary's budget requests to the governor, so that these requests may be incorporated into the executive budget. However, because the Oklahoma judiciary firmly believes that only the legislature should wield the power of the purse, the governor rarely receives a copy of the judicial branch budget. When the Chief Justice does provide the governor with a copy, it is frequently too late for the governor to incorporate the requests into his executive budget. West Virginia's statute stipulates that the governor is to pass the judiciary's request on to the legislature. This statute and other similarly worded state statutes have typically been treated as requiring the governor to simply sign off on the judiciary's request and submit it to the legislature as part of the budget. However, many are uncertain of the legal implications if the executive in West Virginia decided to unilaterally amend the request. Only 31 governors receive a copy of the judicial branch budget, often as a courtesy. *Id.* at 5-6.
- 59 These included Alaska, Arizona, Arkansas, Colorado, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Montana, Nevada, New Hampshire, New Mexico, New York, North Dakota, Ohio, Oregon, Puerto Rico, South Dakota, Texas, Vermont, Washington, West Virginia, and Wyoming. Some states, such as West Virginia and Kansas, statutorily prohibit executive amendment of the judicial budget. *See, e.g.*, W. Va. Code § 11B-2-7 (2004); Kan. Stat. Ann. § 75-3718(c) (2004). Others, such as New York, do so through the state constitution. *See, e.g.*, N.Y. Const. art.

- VII, § 1. Some states, such as Arizona, prohibit the executive from making any recommendation regarding the judiciary's request.
- 60 North Dakota law provides, for example, that “[t]he state court administrator shall submit a comprehensive budget for the supreme court and the district courts to the legislative assembly.” 2005 N.D. Laws 27-01-01.01.
- 61 California is an example of this dynamic.
- 62 James Douglas & Roger Hartley, *The Politics of Court Budgeting in the States: Is Judicial Independence Threatened by the Budgetary Process?*, 63 PUB. ADMIN. REV., NO. 4 (July/August 2003) (presented at the 73rd Annual Meeting of the Southern Political Science Association, Atlanta, Georgia, November 7–10, 2001), available at <http://www.cas.sc.edu/poli/psrw/Douglas1116.pdf>, p. 4. Issues that sparked legislative action included rulings over the constitutionality or legality of a law or state action and pressure to raise revenues. *Id.* at 12.
- 63 The formula mandated by California's Code is one example of this scheme, Cal. Gov. Code §77202(a) (2005).
- 64 According to the West Virginia constitution: “The Legislature shall not amend the budget bill so as to create a deficit but may amend the bill by increasing or decreasing any item therein: Provided, *That no item relating to the judiciary shall be decreased, and except as otherwise provided in this constitution*, the salary or compensation of any public officer shall not be increased or decreased during his term of office: Provided further, That the Legislature shall not increase the estimate of revenue submitted in the budget without the approval of the governor.” W.V. Const. art. VI, § 51, subsec. B, para. 5 (emphasis added).
- 65 In West Virginia, for example, the state constitution permits the reduction of judicial salaries, so long as the reduction does not take effect until the following term of office. Moreover, West Virginia is one of three states with a fully elected judiciary.
- 66 Douglas & Hartley, *supra* note 62, at 11.





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