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Assaults on the Courts: A Legislative Round-Up

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In recent months, there has been much justified concern about the Trump administration’s attacks on the federal judiciary. The president’s assault on the legitimacy of a “[so-called judge](#),” his [assertion](#) that the courts would be to blame for a terrorist attack, and his more recent [call](#) to break up the 9th Circuit Court of Appeals after it ruled against the administration all pose troubling threats to courts’ essential role in protecting rights and upholding the rule of law in our democracy.

During this same period, however, there has also been a quieter political push targeting state courts — which hear more than 95 percent of all cases nationwide, with more than 100 million cases coming before nearly 30,000 state court judges each year. In state legislatures across the country, a wave of bills this year has sought to limit courts’ power or politically manipulate the judiciary in troubling ways.

This year, at least 41 bills in 15 states have targeted state courts, including efforts to control the ways by which judges reach the bench, to unseat judges currently on courts, and generally to restrict courts’ jurisdiction and power. While lawmakers have employed similar tactics in the past, one new trend is a group of bills that would allow state legislatures to override or refuse to enforce court decisions, potentially undermining the role of the courts in our constitutional system. So far this year, nine such bills have been introduced in seven states.

Many bills reflect apparent attempts to increase political influence over the courts, entrench partisan interests, or respond to unpopular judicial rulings. They also align with broader [trends](#) toward the heightened politicization of state courts, raising concerns that it will become increasingly difficult for judges to put aside partisan and ideological preferences when deciding cases. Unfortunately, many of these measures have had political traction: bills targeting the courts have passed in Arkansas, Georgia, Indiana, and North Carolina. In Arizona, Florida, Illinois, and Oklahoma bills have been voted out of a chamber of the legislature.

North Carolina’s experience is particularly noteworthy. Since Democrats won control of the governor’s office and the state Supreme Court last November, the state’s Republican-controlled

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legislature has passed a series of laws that weaken the governor's power over judicial selection and entrench Republican control in the lower courts — normalizing political interference in the rules governing how judges are chosen and how courts are structured.

One new law reduces the size of North Carolina's intermediate appellate court by three seats, thus preventing the governor from filling vacancies that are expected to open when several (Republican-appointed) judges step down due to the state's mandatory retirement age. The bill was passed [without](#) input from the court of appeals, its judges, or the courts' administrative body. In a dramatic move, days before the legislature overrode the governor's veto, Judge Doug McCullough, a Republican who was expected to resign later this month when he reached the mandatory retirement age, [resigned](#) in protest so that the governor would be able to appoint a new judge to fill the seat before the bill was enacted. Judge McCullough said: "I did not want my legacy to be the elimination of a seat and the impairment of a court that I have served on."

The politicization of the judiciary threatens the integrity of our courts and the promise of equal justice for all. Drawing on bills identified in the National Center for State Courts' *Gavel to Gavel* [website](#) and in a review of media reports, this resource highlights how this politicization is playing out in state legislatures across the country.

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Provisions Allowing Legislatures to Override Courts or Refuse to Enforce Court Decisions

In at least seven states, bills have been introduced that would allow legislatures to overrule or refuse to enforce court decisions. These bills come in the [context](#) of rising tensions between state legislatures and courts in many states, often in response to unpopular court decisions in areas such as school funding and LGBT rights. In support of a bill in Florida, one lawmaker [wrote](#): “It is my concerted view that such provisions, if enacted by the people would curtail the tendency of activist judges to manipulate the law to suit their political views and agendas.” Some of these bills apply to state court rulings, while others purport to give states the power to overrule federal courts. During the 2011-12 biennium, legislators in New Hampshire, Oklahoma, and Tennessee made a [similar push](#) to bar judicial review of acts passed by the state legislature, but those measures were ultimately unsuccessful.

State: ARIZONA

Bill Info: [HB 2097](#); Sponsor: Rep. Bob Thorpe; Introduced: 1/12/2017

Description: This bill would grant the legislature the power to prohibit the use of any state resources to implement or administer a federal court ruling or other federal action that it determines violates the U.S. Constitution.

Status: The bill passed the House on 2/1/2017 and was sent to the Senate.

State: FLORIDA

Bill Info: [SJR 1098](#) / [HJR 121](#); Sponsor: Sen. Keith Perry / Rep. Julio Gonzales and co-sponsors; Introduced: 3/7/2017

Description: This bill, an amendment to the state constitution, would allow the legislature to override any Florida state court decision that voided a “law, resolution, or other legislative act,” based on a two-thirds vote within five years of the ruling. If approved, this amendment would appear as a ballot measure.

Status: The joint resolution was introduced on 3/7/2017 in both the Senate and the House. The legislative session ended on 5/5/2017.

State: FLORIDA

Bill Info: [HM 125](#); Sponsor: Rep. Julio Gonzales and co-sponsors; Introduced: 3/7/2017

Description: The bill urges Congress to propose an amendment to the U.S. Constitution that would allow Congress to overrule federal court decisions.

Status: The legislative session ended on 5/5/2017.

State: IDAHO

Bill Info: [HB 65](#); Sponsor: Rep. Paul Shepherd; Introduced: 1/26/2017

Description: The bill would authorize the legislature to invalidate federal laws and court decisions that it declares violate the U.S. Constitution and would bar state judges from enforcing them.

Status: The bill was referred to the House State Affairs Committee on 1/27/2017. The legislative session ended on 3/29/2017.

State: MISSOURI

Bill Info: [HJR 41](#); Sponsor: Rep. Jeff Pogue; Introduced: 3/1/2017

Description: The bill, a proposed constitutional amendment, would allow voters and the legislature to submit federal laws to a ballot initiative. It provides that “if a majority of the voters vote in opposition to the constitutionality of the federal law, then it shall not be enforced by any agency, court, or political subdivision of this state and no state moneys shall be expended for the enforcement of the federal law. Furthermore, if a federal law is declared unconstitutional by majority vote of a referendum in this state, then the courts of this state shall be stripped of jurisdiction to enforce such a particular federal law[.]”

Status: The bill was read a second time on 3/2/2017 in the House.

State: OKLAHOMA

Bill Info: [HR 1004](#); Sponsor: Rep. Chuck Strohm; Introduced: 2/13/2017

Description: The bill directs state judges not to “interfere” with the state’s abortion laws.

Status: The bill was introduced on 2/13/2017 in the House.

State: TEXAS

Bill Info: [SB 1307](#); Sponsor: Sen. Bob Hall; Introduced: 3/14/2017

Description: The bill would protect judges from any disciplinary action by the State Commission on Judicial Conduct for refusing to obey a federal court ruling.

Status: The bill was referred to the Senate Committee on State Affairs on 3/14/2017.

State: TEXAS

Bill Info: [HB 2808](#); Sponsor: Rep. Valoree Swanson; Introduced: 3/30/2017

Description: The bill would prevent state agencies from using appropriated money to enforce federal actions, including court decisions, unless that use is explicitly authorized by the legislature.

Status: The bill was referred to the House Select Committee on State & Federal Power & Responsibility on 3/30/2017.

State: WASHINGTON

Bill Info: [HB 1072](#); Sponsor: Rep. John Koster; Introduced: 1/9/2017

Description: The bill would allow the legislature, by majority vote, to override a court decision declaring a legislative act unconstitutional.

Status: The bill was referred to the House Judiciary Committee on 1/9/2017. The legislative session ended on 4/23/2017. The bill was reintroduced in the special legislative session, which convened on 4/24/2017.

Changes to Judicial Selection Systems

Changes to states' judicial selection procedures are not necessarily problematic; indeed, many states' judicial selection systems are in [urgent need of reform](#). But many of the bills described below risk *increasing* the politicization of state courts, either by giving political actors more control over the selection of judges, or by increasing partisan advantage. In Oklahoma, for example, where the legislature has previously battled with the courts — including [calls by lawmakers in 2014 to impeach](#) state supreme court justices following a ruling ordering removal of a Ten Commandments monument from the state capitol — several bills would give the political branches more control over judicial selection, or have the function of unseating judges currently on the bench. In North Carolina, after a Democrat won the state's gubernatorial race last November, the Republican-controlled legislature introduced bills that would transfer judicial selection powers from the governor to the legislature, and passed a bill that made lower court elections partisan, a move that was widely-seen as advantaging Republicans. A bill that recently passed in Indiana has also attracted controversy. The bill eliminates judicial elections in Marion County in favor of a “merit selection” system in which a committee would nominate judges to be appointed by the governor. It has been met with fierce [opposition](#) from black community leaders and lawmakers who argue it will reduce diversity on the bench and disenfranchise the county's largely black and Democratic voters, leaving the state's Republican governor with the power to make appointments.

State: ARIZONA

Bill Info: [HCR 2030](#); Sponsor: Rep. Don Shooter; Introduced: 2/14/2017

Description: The bill would change the state's current system of selecting appellate and superior court judges from appointment to partisan elections. It would also reduce judicial terms to 2 years.

Status: The bill was held in the House Appropriations and Rules Committees on 2/14/2017.

State: ARIZONA

Bill Info: [HB 2534](#); Sponsor: Rep. Don Shooter; Introduced: 2/14/2017

Description: This bill, a companion to HCR2030, provides the implementing statutes for partisan elections.

Status: The bill was held in the House Appropriations and Rules Committees on 2/14/2017.

State: INDIANA

Bill Info: [HB 1036](#); Sponsor: Rep. Gregory Steuerwald and co-sponsors; Introduced: 1/4/2017

Description: The bill would end Marion County's judicial elections and establish a Marion County judicial selection committee to recommend superior court judges to the governor for appointment.

Status: The bill passed both chambers and was signed into law by the governor on 4/28/2017.

State: IOWA

Bill Info: [SF 327](#); Sponsor: Sen. Julian Garrett and co-sponsors; Introduced: 2/22/2017

Description: The bill restructures the state judicial nominating commission so that the governor would have the authority to appoint virtually all voting members.

Status: A subcommittee of the Senate Judiciary Committee approved the bill on 3/1/2017. The legislative session ended on 4/22/2017.

State: **MISSOURI**

Bill Info: [SJR 11](#); Sponsor: Sen. Dan Hegeman; Introduced: 1/4/2017

Description: This proposed constitutional amendment would, if approved by voters on the ballot, require judicial nominating commissions to provide the governor with a list of all qualified candidates from which to select a nominee. Under current law, the nominating commission may pass along a list of only three names from which the governor may pick.

Status: The bill, as amended, was approved by the Senate General Laws Committee on 3/1/2017. It was placed on the Senate Informal Calendar of Bills for Perfection on 5/8/2017.

State: **NORTH CAROLINA**

Bill Info: [HB 100](#); Sponsor: Rep. Justin Burr and co-sponsors; Introduced: 2/14/2017

Description: The bill restores partisan elections for the selection of superior and district court judges.

Status: The legislature overrode the governor's veto, and the bill was passed into law on 3/23/2017.

State: **NORTH CAROLINA**

Bill Info: [HB 240](#); Sponsor: Rep. Justin Burr and co-sponsors; Introduced: 3/1/2017

Description: The bill transfers the governor's authority to fill interim district court vacancies to the legislature.

Status: The bill passed the House and was sent to the Senate Committee on Rules and Operations on 3/14/2017.

State: **NORTH CAROLINA**

Bill Info: [HB 241](#); Sponsor: Rep. Justin Burr and co-sponsors; Introduced: 3/1/2017

Description: The bill transfers the governor's authority to name special superior court judges to the legislature.

Status: The bill passed the House and was sent to the Senate Committee on Rules and Operations on 3/14/2017.

State: **NORTH CAROLINA**

Bill Info: [SB 306](#); Sponsor: Sen. Jeff Tarte and co-sponsor; Introduced: 3/16/2017

Description: The bill would "subdivide Mecklenburg County District Courts to mirror the Superior Court Districts."

Status: The bill was referred to the Senate Select Committee on Elections on 4/10/2017.

State: **NORTH CAROLINA**

Bill Info: [HB 335](#); Sponsor: Rep. Justin Burr and co-sponsors; Introduced: 3/13/2017

Description: The bill would require the governor to fill judicial vacancies from a list of three persons recommended by the vacating judge's political party.

Status: The bill passed the House on 4/26/2017. It was referred to the Senate Committee on Rules and Operations on 4/27/2017.

State: **NORTH DAOKOTA**

Bill Info: [HB 1313](#); Sponsor: Rep. Jeffrey Magrum; Introduced: 1/16/2017

Description: The bill would remove all attorneys and judges from the judicial conduct commission, require all members to be active or retired military, and transfer commission appointment power from the governor to the adjutant general.

Status: The bill, as amended, was rejected in the House on 2/3. The legislative session ended on 4/27/2017.

State: **OKLAHOMA**

Bill Info: [SJR 14](#); Sponsor: Sen. Nathan Dahm and co-sponsor; Introduced: 1/18/2017

Description: The bill would change retention elections for appellate judges such that judges would need support from 60% of voters rather than a simple majority to keep their seats.

Status: The bill was approved by the Senate Judiciary Committee on 2/7/2017. The bill received a House co-sponsor on 2/13/2017.

State: **OKLAHOMA**

Bill Info: [SJR 42](#); Sponsor: Sen. Anthony Sykes and co-sponsor; Introduced: 1/19/2017

Description: The bill would require partisan elections for all appellate courts.

Status: The bill was approved by the Senate Judiciary Committee on 2/7/2017. The bill received a House co-sponsor on 3/15/2017.

State: **OKLAHOMA**

Bill Info: [SJR 43](#); Sponsor: Sen. Anthony Sykes and co-sponsor; Introduced: 1/20/2017

Description: Under the bill, the Judicial Nominating Commission would no longer vet and recommend candidates to the governor for judicial office but would instead review candidates selected by the governor as either “qualified” or “not qualified” before the candidate would go to the Senate for confirmation.

Status: The bill passed the Senate on 3/21/2017. It was referred to the House Rules Committee on 3/27/2017.

State: **OKLAHOMA**

Bill Info: [SJR 44](#); Sponsor: Sen. Anthony Sykes and co-sponsor; Introduced: 1/20/2017

Description: The bill would keep the state’s merit/commission selection system but require the Judicial Nominating Commission to send the Governor 5 names (currently 3) for consideration and would allow the Governor to ask for another list of 5, for a total of 10 names. It would require the nominee be subject to Senate confirmation and provides that if Senate fails to act within certain time frame(s) nominee would be confirmed by default.

Status: The bill passed the Senate on 3/21/2017. It was referred to the House Rules Committee on 3/27/2017.

State: **OKLAHOMA**

Bill Info: [SB 213](#); Sponsor: Sen. Nathan Dahm and co-sponsor; Introduced: 1/17/2017

Description: The bill would modify the district lines used for the selection of supreme court justices. Under the new arrangement, one justice would be selected from each of the five congressional districts and four justices selected at large.

Status: The bill passed the Senate. It was amended in the House Judiciary – Civil and Environmental Committee and passed the House. The House amendment was rejected in the Senate. The Senate requested a conference on 5/3/2017.

State: **OKLAHOMA**

Bill Info: [SB 700](#); Sponsor: Sen. Anthony Sykes and co-sponsor; Introduced: 1/19/2017

Description: The bill would provide that all six of the attorney-members of the Judicial Nominating Commission be appointed by the President Pro Tempore of the Senate or the Speaker of the House of Representatives.

Status: The bill was approved by the Senate Judiciary Committee 2/7/2017. The bill received a House co-sponsor on 3/15/2017.

State: **OKLAHOMA**

Bill Info: [SB 708](#); Sponsor: Sen. Anthony Sykes and co-sponsor; Introduced: 1/19/2017

Description: The bill would mandate that nominees for the state’s main trial court have “experience as lead counsel in a minimum of three (3) jury trials brought to verdict prior to filing for such office or appointment” in addition to the previously identified required qualifications.

Status: The bill passed the Senate on 3/21/2017. It was referred to the House Judiciary – Civil and Environmental Committee on 3/27/2017.

Judicial Term Limits

Judicial term limits can be a desirable reform that advances core values such as judicial independence and diversity on the bench. However, they can also be used to force unpopular judges off the bench, or gain partisan advantage in the courts. In Oklahoma, a bill would require appellate judges to retire when their years of judicial service plus their age equals eighty years, and would have the function of forcing many of the state’s sitting appellate judges off the bench. In Florida, a proposal to set term limits for appellate judges, which would appear on the ballot in 2018, is [highly contentious, and has divided legislators on party lines](#). The bill’s sponsor advocated for the bill saying: “Is it time to rein in the judiciary with a simple concept that already applies to the executive branch and the legislative branch?” An opponent of the bill responded that the bill is an attempt to “bully” judges for their unfavorable rulings.

State: FLORIDA

Bill Info: [HJR 1](#); Sponsor: Rep. Jennifer Sullivan and co-sponsors; Introduced: 3/7/2017

Description: The bill would prevent appellate judges from seeking retention after 12 consecutive years in office, which constitutes two terms. These judges would have to wait at least one year after leaving before seeking judicial office again. If approved, this measure would appear as a ballot measure.

Status: The bill passed the House on 3/29/2017. It was referred to relevant Senate committees on 4/5/2017. The legislative session ended on 5/5/2017.

State: FLORIDA

Bill Info: [SJR 482](#); Sponsor: Sen. Travis Hutson; Introduced 3/7/2017

Description: The bill, an amendment to the Florida constitution, would create a minimum age requirement and term limits for Supreme Court Justices and judges of the district courts of appeal and require 1 year of prior service as a judge for appointment as Supreme Court Justice. If approved, this amendment would appear as a ballot measure.

Status: The bill was referred to relevant Senate committees on 2/9/2017. The legislative session ended on 5/5/2017.

State: OKLAHOMA

Bill Info: [SB 699](#); Sponsor: Sen. Anthony Sykes and co-sponsor; Introduced: 1/19/2017

Description: The bill would require all appellate judges to retire when their years of judicial service, plus their age, equals eighty years.

Status: The bill was approved by the Senate Judiciary Committee on 2/7/2017. It received a House co-sponsor on 3/15/2017.

Changes to Size of Courts

Over the past decade, there has been an [uptick in overtly political legislative proposals](#) aimed at changing the number of justices on courts of last resort. Last year, lawmakers in [Arizona](#) and [Georgia](#) took advantage of single-party control of the legislature and the governor's mansion to pass laws to increase the size of their respective state high courts. That trend has continued into this session. Late last year, there were [rumors](#) that the Republican-controlled North Carolina legislature planned to expand the size of the state supreme court to prevent Democratic judges from taking over a majority for the first time in twenty years. While that proposal never materialized, tinkering with courts in North Carolina has continued into this session, including a measure that reduces the size of the court of appeals, stripping the governor of opportunities to fill vacancies. And in Oklahoma, a renewed attempt to cut the size of the state high court comes after [years of acrimony](#) between the Court and the legislature.

State: OKLAHOMA

Bill Info: [HB 1699](#); Sponsor: Rep. Kevin Calvey; Introduced: 1/19/2017

Description: The bill would reduce the members on the state Supreme Court from nine to five.

Status: The bill was referred to the House Judiciary - Civil and Environmental Committee on 2/7/2017.

State: NORTH CAROLINA

Bill Info: [HB 239](#); Rep. Justin Burr and co-sponsors; Introduced: 3/1/2017

Description: The bill reduces the North Carolina Court of Appeals from 15 members to 12 members.

Status: The legislature overrode the governor's veto, and the bill was passed into law on 4/26/2017.

Constraints on Courts' Control of their Rules, Docket, or Courtroom, or Politicizing Judicial Discipline

Several states are considering bills that would give state legislatures more control over court rules and procedures, or impose new reporting requirements. While less problematic than efforts to change court structures or limit judicial review, such measures can raise concerns about the separation of powers between the courts and the political branches of government. More generally, they are another example of how state legislatures are seeking to limit courts' autonomy. Another troubling development is efforts to give political actors greater power over judicial discipline. In Georgia, a new law grants the legislature and governor greater control over the structure, membership, and activities of the body responsible for disciplining and removing judges.

State: **ARKANSAS**

Bill Info: [SJR 8](#); Sponsor: Sen. Missy Irvin and co-sponsors; Introduced: 2/2/2017

Description: The bill puts a constitutional amendment on the ballot giving the legislature the ability, by a three-fifths vote, to amend or repeal “a rule of pleading, practice, or procedure prescribed by the state Supreme Court,” or to adopt “on its own initiative a rule of pleading, practice, or procedure.”

Status: The bill passed both chambers of the legislature and will appear on the ballot in 2018.

State: **GEORGIA**

Bill Info: [HB 126](#); Sponsor: Rep. Wendell Willard and co-sponsors; Introduced: 1/25/2017

Description: Last year, a ballot measure amended the state constitution to replace the state's Judicial Qualifications Commission, which is responsible for discipline and removal of judges, with one designed and governed by the General Assembly. The bill reconstitutes the Judicial Qualifications Commission, with members appointed by the Supreme Court, governor, president of the senate, and speaker of the house.

Status: The bill passed both chambers of the legislature and was signed into law by the governor on 4/5/2017.

State: **ILLINOIS**

Bill Info: [HB 3054](#); Sponsor: Rep. William Davis and co-sponsors; Introduced: 2/9/2017

Description: The bill, as introduced, would require every circuit judge to “announce that a person can file a complaint against him or her, prior to calling the first case of the day.” Additionally, the clerk must post within every courtroom a notice instructing the public that complaints may be filed and must make available instructions for filing a complaint. As amended, the bill reduced the requirements to a need for clerks to post notice of the right to file a complaint in common areas of the courthouse.

Status: The bill, as amended, passed the House on 4/7/2017. The bill was referred to the Senate Judiciary Committee on 5/2/2017.

State: **FLORIDA**

Bill Info: [HB 301](#); Sponsor: Rep. Frank White and co-sponsors; Introduced: 3/7/2017

Description: The bill would require the Supreme Court to provide a detailed explanation to the governor and legislature for all cases “for which a decision or disposition has not been rendered within 180 days after oral argument was heard or after the date on

which the case was submitted to the court panel for a decision without oral argument when a case goes longer than 180 days.”

Status: The bill passed the House on 3/10/2017. It was amended and passed the Senate on 5/1/2017. It was then returned to the House. The legislative session ended on 5/5/2017.

State: **NORTH CAROLINA**

Bill Info: [HB 677](#); Sponsor: Rep. Sarah Stevens; Introduced: 4/10/2017

Description: The bill would permit district court judges to be appointed to a three-judge panel determining the validity of acts “apportioning or redistricting State legislative or congressional districts” or the validity of claims “challenging the facial validity of an act of the General Assembly.” Under the current law, 3-judge panels include only superior court judges, not district court judges.

Status: The bill passed the House on 4/20/2017. It was referred to the Senate Committee on Rules and Operations on 4/21/2017.

State: **WEST VIRGINIA**

Bill Info: [HB 2685](#); Sponsor: Del. Kelli Sobonya and co-sponsors; Introduced: 2/23/2017

Description: The bill would require every circuit clerk, “no less than every quarter of the year, submit a report to the Supreme Court of Appeals, the Legislature and the Governor, listing all pending cases which have exceeded the time standards for trial courts as established by rules of the West Virginia Supreme Court of Appeals.”

Status: The bill was referred to the House Judiciary Committee on 2/23/2017. The legislative session ended on 4/11/2017.

Firearms in Courtrooms

Courts have also been pulled into broader debates about gun rights in public spaces. At least three states considered bills this term that would make it easier to bring guns into courthouses or courtrooms.

State: **FLORIDA**

Bill Info: [HB 803](#); Sponsor: Rep. Don Hahnfeldt; Introduced: 3/7/2017

Description: The bill would remove the prohibition against carrying a weapon into a courthouse or courtroom (among other places).

Status: The bill was referred to the relevant house committees on 2/23/2017. The legislative session ended on 5/5/2017.

State: **ARKANSAS**

Bill Info: [SB 660](#); Sponsor: Sen. Linda Collins-Smith; Introduced: 3/6/2017

Description: The bill would remove a provision making it a felony to possess a firearm in a courtroom.

Status: The bill was referred to the Senate Judiciary Committee on 3/6/2017. The legislative session ended on 5/5/2017.

State: **OKLAHOMA**

Bill Info: [HB 1104](#); Sponsor: Rep. Bobby Cleveland and co-sponsors; Introduced: 1/11/2017

Description: The bill would allow elected officials in possession of a valid handgun license to carry a concealed firearm “when acting in the performance of their duties within the courthouses of county in which he or she was elected.” They would not be allowed to carry the handgun into a courtroom.

Status: The bill passed both chambers of the legislature and was signed into law by the governor on 5/2/2017.