

# Gavel to Gavel

A review of state legislation affecting the courts

December 2010

Special Impeachment Edition

## *Focus: Removal from Office for Specific Decisions*

The last decade has seen a dramatic increase in not only the threats to impeach state court judges because of their decisions, but the actual drafting of legislation to that effect. Legislatures are not even in session, yet two additional efforts are already underway in Iowa and Oklahoma. This special edition of *Gavel to Gavel* looks back at similar efforts to impeach or remove judges based solely on their decisions over the last several legislative cycles.

### 2004

Colorado: Articles of impeachment for malfeasance were filed against Judge John W. Coughlin ([HR 1007](#)) for his order in a custody case that “the child's parent ensure that her daughter not be exposed to anything in her religious upbringing or teaching "that can be considered homophobic.””

Massachusetts: Several bills (April 4, 2004 [no number available](#); May 24, 2004 [no number available](#)) are filed to remove through a bill of address the four justices of the state’s Supreme Judicial Court for their ruling requiring the legalization of same sex

marriage.

Oklahoma: The *Oklahoma* legislature considered a resolution ([HR 1051](#)) that condemned the Commonwealth of *Massachusetts* (in general) for the decision by its Supreme Judicial Court requiring the legalization of same sex marriage and requesting the impeachment of the Massachusetts judges that so ruled.

Virginia: [HB 727](#) provided that any judge who ruled Virginia's prohibition against marriage between persons of the same sex unconstitutional would be deemed to have committed malfeasance in office and be subject to impeachment under the Virginia Constitution.

### 2005

Indiana: [HB 1512](#) provided that a judge who fails to rule in favor of joint legal custody and joint physical custody in a divorce/custody case, with limited exceptions, is automatically guilty of judicial misconduct and subject to removal from office.

Massachusetts: [HB 652](#) was filed to remove through a bill of address the four justices of the state’s Supreme Judicial Court for their ruling requiring the legalization of same sex marriage.



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Tennessee: [HB 2951/SB 3522](#) would have made any decision that “deviates from the rule of law” or precedent presumptively an act of judicial misconduct unless the judge could “present clear and convincing evidence that, before ruling, the adjudicator competently and thoroughly researched the law on the question controlling [and] cite uncontradicted and controlling precedent...that the question was one of first impression.”

## 2006

Maryland: [HA 1](#) sought to remove trial judge M. Brooke Murdock from office for her ruling that found a right to same-sex marriage in that state’s constitution.

Vermont: [JHR 52](#) initially called upon District Judge Edward Cashman to resign for the sentence he handed down in a child molestation case. Judge Cashman later reconsidered and increased the sentence, and the resolution was heavily amended to remove direct references to him or any calls for his resignation, and include a provision that the General Assembly “recognizes the importance of an independent judiciary to the rule of law in our constitutional system of government.”

New Hampshire: [HA 1](#) was an effort to outright remove a sitting judge for a decision made years prior. Superior Court Justice Kenneth R. McHugh had ruled plaintiff’s pleadings in a divorce case frivolous.

Ohio: The House of Representatives considered removing Judge John Connor for

his 2006 sentencing of a sex offender. The Speaker of the House issued a press release saying the House was “[reviewing the processes by which Judge Connor may be removed from the bench.](#)”

New Jersey: Resolutions seeking the impeachment of the entire New Jersey Supreme Court for their ruling on same sex marriage were introduced as [AR 217](#), [AR 218](#), [AR 219](#), [AR 220](#), [AR 221](#), [AR 222](#) and [AR 223](#).

## 2007

Georgia: Senior Superior Court Judge Hilton Fuller was [threatened with impeachment](#) after he ordered additional funding for the public defender representing Brian Nichols. Nichols was standing trial for his role in the 2005 Atlanta courthouse shooting. The Speaker of the Georgia House set up a special committee to investigate Fuller’s actions.

## 2008

Maryland: A resolution was introduced ([HA 1](#)) to remove Judge Katherine D. Savage. The judge ordered the release of an alleged rapist after a three-year trial delay because of trouble finding an interpreter for the defendant.

Missouri: [A state representative sent a letter to a judge](#) outside his district after the judge ruled against a friend of the representative in a custody matter. The letter included a draft of the impeachment articles he was proposing for the judge’s ouster and a suggestion the judge remove herself from any further proceedings related to the case.

## 2009

Florida: [SB 1142](#) redefined "official misconduct" for state ethics purposes to include a judicial officer's "Render[ing] any ruling, opinion, action, or inaction adverse to the doctrines of stare decisis, binding precedent, or the supremacy clause of the United States Constitution when he or she is clearly apprised of evidence, unless he or she has the authority to overrule or recede from the rule of law, or distinguishes the rule of law or sets forth some other intervening or superseding evidence, and does so by the ruling, opinion, action, or inaction." The bill would have required state attorneys and law enforcement "strictly enforce without discretion" the provision.

Minnesota: [HB 1632](#) sought to replace the state's Board of Judicial Standards with 8 randomly selected citizens, plus 2 people selected by the House and Senate. HB 1632 provided the Board the power to sit in review and judgment of court decisions and remove a judge from office if the Board overturned judge's ruling. It further provided any determination of the Board as to the legality/constitutionality of the jurist's removal was deemed unappealable to any court but could be "appealed" to the state legislature.

New Hampshire: Three separate efforts were made to remove by bill of address judges and quasi-judicial officers due to their rulings in family and matrimonial cases. [HA 1](#), filed against marital master Michael Garner, accused him of "recommended[ing] to the presiding justice (Judge Sadler, see below) an order removing a child from an educational setting on the basis of religious

prejudice." The case surrounds a divorce case and a child, identified only as "Amanda," who was being home schooled by her mother, while her father wanted the child placed in public school. According to media reports, Garner evaluated the home schooling situation. On July 13, 2009, he issued his recommendation, stating "The Court is extremely reluctant to impose on parents a decision about a child's education" but ultimately deciding, based on the testimony of the parents and a Guardian Ad Litem, that it was in "Amanda's best interests to attend public school."

[HA 2](#) was lodged against Judge Lucinda Sadler for her role in the homeschooling order. Sadler was also cited for her role in as many as 6 other child support and custody cases.

[HA 3](#) focused on Marital Master Philip Cross. While details were not provided as to specific case number or names in the bill of address, the charges appear to duplicate most of those found in the bill of address Judge Lucinda Sadler but do not involve the "Amanda" case for which Sadler and Marital Master Michael Garner face the prospect of being removed from their respective offices.

## 2010

Arizona: [HB 2379](#) & [SB 1026](#) prohibited use or citation of religious sectarian law or foreign law. Usage or citation was declared to be grounds for impeachment.

Iowa: [HB 2313](#) prohibited judges from using "judicial precedent, case law, penumbras, or

international law as a basis for rulings." Requires judges use only the U.S. and Iowa Constitutions and the Code of Iowa in making decisions. The bill permitted use of the Federalist papers and other writings of the founding fathers, but only "if such source material is used in full context." It also prohibited any court from reviewing the legislation and made such an effort, or any violation of the act, grounds for impeachment.

Oklahoma: [HR 1065](#) requested judge Thomas Bartheld be removed from office after he accepted a plea deal in a child molestation case that was approved by the prosecution, the defense, and the victim's parents.

## 2011

Oklahoma: [HR 1001](#) requests judge Thomas Bartheld be removed from office after he accepted a plea deal in a child molestation case that was approved by the prosecution, the defense, and the victim's parents.

Iowa: [Incoming legislators plan to introduce articles of impeachment](#) against four justices of that state's Supreme Court who ruled in favor of same-sex marriage (the other three justices of the unanimous court were voted out of office in November 2010).