



Pro-abortion Wyoming Supreme Court Ruling Shows Need for Constitutional State Government

What is the proper method to select judges for state courts? How should states design their constitutions? And why does it matter?

A recent ruling by the Wyoming Supreme Court demonstrates why states should apply [America's founding principles](#) in their judicial-selection processes and constitutional structures — and why failure to do is causing major, negative consequences.



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Wyoming Supreme Court Ruling

On January 6, the Wyoming Supreme Court issued its opinion in [State v. Johnson](#), in which it struck down two pro-life bills that the Legislature enacted after the 2022 *Dobbs v. Jackson Women's Health Organization* U.S. Supreme Court decision that [overturned](#) *Roe v. Wade*. In a 4-1 decision, the Wyoming Court ruled that [Article 1, Section 38 of the Wyoming Constitution](#) protects a so-called right to abortion. In its opinion, written by Chief Justice Lynne Boomgarden, the Court concluded:

The State did not meet its burden of proving the Abortion Laws are necessary to achieve a compelling government interest or are narrowly tailored to avoid unduly infringing on a woman's right to make her own health care decisions under Article 1, § 38 of the Wyoming Constitution.

The Court's lone dissenter, Justice Kari Jo Gray, disagreed, arguing that the state's abortion laws "constitute a reasonable and necessary restriction" permitted by the state constitution.

On January 20, the Wyoming Attorney General's Office [filed a request](#) to rehear the case, arguing that the Court "made numerous mistakes or errors of law." On February 18, however, the Court [rejected](#) this request.

Conservatives React

Wyoming conservatives strongly criticized the ruling. For example, the Wyoming Freedom Caucus, which holds a majority in the state House of Representatives, issued a [statement](#) declaring:

Today marks a dark day in Wyoming history. After decades of liberal leadership in the governor's office, the State Supreme Court has been filled with jurists who reject basic biology and human dignity.

The state's highest court ruled today that life is not a human right, holding instead that the barbaric act of abortion is.



Written by [Peter Rykowski](#) on February 26, 2026

The Freedom Caucus also [noted](#) that one of the justices who heard the case, retired Chief Justice Kate Fox, who filled the position of an incumbent justice who recused, previously worked for the National Association for the Repeal of Abortion Laws, a pro-abortion lobbying group.

Conservative state legislators introduced constitutional amendments to change the appointment process for the Supreme Court ([HJ0006](#) and [SJ0004](#)) and to amend Article I, Section 38 of the state constitution ([SJ0007](#)). However, these amendments failed to be formally introduced in the 2026 state budget session.

The Importance of Judicial Selection

A 4-1 pro-abortion Supreme Court ruling in arguably the [most conservative](#) state in the country may seem surprising. Unfortunately, however, Wyoming is not alone as a conservative state with a left-wing court majority. In just the last few years, the supreme courts of [Kansas](#), [Montana](#), [Oklahoma](#), and [Utah](#), among other states, have struck down or blocked state laws restricting abortion — and conservative states have also experienced leftist state supreme court decisions on a host of other issues.

Why are the supreme courts of conservative states so left-wing? One reason — as the Wyoming Freedom Caucus’ statements suggested, and as *The New American* has [previously covered](#) — is that these states’ political leadership is often [far less conservative](#) than its voters, leading to left-wing judicial appointments. However, another important but seldom-mentioned reason is the judicial-selection method each state uses. Of the five states listed above, [four of them](#) use a technocratic method called “merit selection” or the “Missouri Plan,” after the state that first adopted it.

Our article “[Restore State Government](#),” published in the October 14, 2024 issue of *The New American*, explains the problems of merit selection:

Under this method, judicial nominating commissions, usually composed of unelected lawyers, select a handful of judicial nominees. The state governor must choose one of the pre-selected nominees, and cannot consider alternatives. Although its supporters claim it leads to more qualified judges, judicial merit selection is a major example of technocracy, since unelected “experts,” rather than elected representatives, make important decisions under this system. Furthermore, judges appointed under this system lean toward the left when compared to those appointed under other systems. For example, in a 2009 law-review paper, Professor Brian Fitzpatrick of Vanderbilt University argued that, because of “the powerful role it accords lawyers and, in particular, state bar associations,” merit selection “may simply move the politics of judicial selection into closer alignment with the ideological preferences of the bar,” which leans left. And in an in-depth 2017 study, Fitzpatrick found that states using merit selection or nonpartisan elections had judiciaries “skewed to the left” compared to “the public at large in those states.”

If technocratic merit selection is so harmful, what about electing judges? As our article explains, it is just as harmful to the republican form of government advocated by the Founding Fathers:

While electing judges may sound positive, it is yet another step toward democracy and away from representative government. Furthermore, electing judges forces them to make campaign promises that potentially conflict with their duty to uphold the law. [Harry F.] Atwood, in [his 1918 book] *Back to the Republic*, decried the election of judges as “a gross



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error” for this very reason. He also noted that direct election of any state officials besides the governor and legislators allows them to avoid “full responsibility for the quality of public service” and leads to “useless expenditures, excessive legislation and chaotic administration,” as well as “less competent men in the public service.”

Sure enough, Montana’s Supreme Court, which is popularly elected, exhibits a clear left-wing tilt. Additionally, states such as Wisconsin that elect their supreme court justices see [enormous campaign spending](#) during judicial campaigns.

In order to restore their judicial system’s commitment to faithfully interpreting the law, states must avoid *both* [democracy](#) and [technocracy](#), and instead adhere to the “Republican Form of Government” advocated by the Founding Fathers and required for all state governments under [Article IV, Section 4](#) of the U.S. Constitution. This means that states should adopt judicial-selection systems that mirror the one used by the federal government: nomination by the governor without interference by a judicial nominating commission, and confirmation by the legislature.

Why State Constitutions Matter

In addition to adopting a proper judicial-selection method, states should ensure that their constitutions strictly uphold limited government and God-given, [negative rights](#). Importantly, the Wyoming Supreme Court based its decision on Article I, Section 38 of the Wyoming Constitution. Titled “Right of health care access,” it declares, in part:

Each competent adult shall have the right to make his or her own health care decisions. The parent, guardian or legal representative of any other natural person shall have the right to make health care decisions for that person.

Of course, killing an innocent preborn baby is not healthcare. However, one can see how this vaguely worded section gave the Court ammunition to justify its pro-abortion opinion. Although this does not excuse the Court for infringing on the God-given right to life or issuing an activist decision, it does illustrate the need to eliminate vague provisions from state constitutions.

Additionally, a “right of health care access” undermines the fundamental purpose of government: to prevent violations of natural, God-given (i.e., [negative](#)) rights. As the [Declaration of Independence](#) notes, “to secure [God-given] rights, Governments are instituted among Men.” A “right to healthcare” is no right at all, since instead of restraining government and protecting individual liberty, it obligates big-government action. Such a constitutional provision directly undermines limited government.

Unfortunately, this problem is common among virtually all state constitutions. Our article “Restore State Government” explains:

While the U.S. Constitution, including its 27 amendments, has 7,591 words, the 50 state constitutions have on average about 39,000 words each. Vermont’s is the shortest at 8,565 words, while Alabama’s is the longest at 369,380 words (down from about 402,000 before a technical revision in 2022). The specific provisions of state constitutions are more important than raw word count, however, and they mandate state involvement in areas far outside the proper, God-given role of government. According to liberal Professor Jorge M. Farinacci-Fernós in a 2023 law-review article, “Many state constitutions are truly modern documents



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that address important social, economic, and political issues from a progressive perspective” and are “indispensable tools in the pursuit of progressive change.” For example, every state constitution mandates a government-education system, and many include provisions on organized labor, welfare, the environment, direct democracy, and positive “rights” that compel big-government action. Meanwhile, multiple state constitutions either have watered-down protections of the right to keep and bear arms or lack them entirely. Atwood, in *Back to the Republic*, noted in 1918 that even then many states had “modeled their constitutions less and less after the plan of the Federal Constitution,” and one can clearly see this today.

Accordingly, every state should model its government structure after what the Founding Fathers prescribed via the federal Constitution, and limit its own constitution to outlining that basic structure and protecting God-given rights.

Taking Action

Unless state governments return to America’s founding principles — and apply those principles in their own constitutions and governance — tragedies such as January’s Wyoming Supreme Court ruling will continue.

Restoring those principles starts with us — educating our fellow citizens about constitutional state government and putting pressure on our elected officials to boldly reapply the Founding Fathers’ [blueprint for government](#). By vigilantly taking action, we can reawaken our country to the principles that made it great.

To help educate your state legislators about constitutional state government, use The New American’s “Make America STATES Again” reprint, available for purchase [here](#). To view our other state-sovereignty resources, [click here](#).



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