

## Judge: Efforts to dilute court wrong Some proposals to change courts

### Justice criticizes lawmakers' bills ahead of speech to Legislature

By Howard Fischer

CAPITOL MEDIA SERVICES

PHOENIX - Don't look for Chief Justice Charles Jones to blast state lawmakers when he addresses them today.

It's not that the head of the Arizona Supreme Court is pleased with some measures being considered to trim his court of its rights. In fact, Jones says most are not only ill-considered but amount to a power grab by the Legislature.

But Jones, in a wide-ranging interview, said he intends to keep his "State of the Judiciary" speech positive.

That doesn't mean he will sit back while some lawmakers try to revamp the judicial system.

"I think the controversy that exists is founded on attempts to shift power, to water down the judicial role," Jones said.

"When those who occupy political office disagree with court opinions, it will normally be because of a political agenda," he added. "And, of course, the natural tendency is to go after the institution - or the culprit if you will - who's responsible for writing the opinion and deciding what the law means."

Jones said some measures are designed to make the courts "political tools" of at least one segment of the Legislature - a segment that became more powerful with the election last year of more conservative Republicans.

For example, one bars courts from ordering the state to spend more than \$1 million without first getting legislative approval.

There are a host of decisions that account for this.

A decade ago the high court said the condition of some schools proved the state was not meeting its constitutional obligation to provide a "general and uniform" school system.

More recently, the state was forced to refund hundreds of millions of dollars illegally collected in income taxes.

Another legislative proposal would let the Legislature set the procedural and evidentiary rules of the court. And there are several proposals to change the way judges are chosen, including requiring Senate confirmation.

That would be a major change from the current system adopted by voters in 1974: Supreme Court, Court of Appeals and Superior Court judges from

- Proposed constitutional amendments affecting the Arizona court system:

- Senate Concurrent Resolution (SCR) 1023 - Repeals the requirement that judges retire at age 70.

- SCR 1025 - Bars courts from issuing any orders that would require the state to spend more than \$1 million unless the Legislature approves.

- SCR 1032 - Divides Maricopa County into five judicial districts and requires the governor to choose from nominees by the Board of Supervisors.

- SCR 1038 - Requires Senate confirmation of Supreme Court and Court of Appeals judges.

- HCR 2005 - Lets justice of the peace courts hear cases of up to \$30,000, up from \$10,000.

- HCR 2013 - Permits Superior Court judges in each county to select the presiding judge rather than the Supreme Court.

- HCR 2014 - Allows the Legislature or the voters, through initiative, to amend or repeal rules adopted by the Supreme Court on procedural or evidentiary matters.

- HCR 2015 - Repeals the constitutional provision setting a \$10,000 cap on what justice of the peace courts can decide, leaving it up to the Legislature.

- HCR 2026 - Strips the Supreme

Maricopa and Pima counties are screened by a commission whose members are confirmed by the Senate. The governor then must choose from a list of not less than three nominees.

Jones said it simply places "another layer of political influence on judicial selection and tenure."

Jones and Justice Ruth McGregor, who will be the new chief justice this year, insisted they and their colleagues are simply doing their job of interpreting the law and the Constitution. But they also pointed out that, in many cases, lawmakers already have the power to undo what they have done.

"The Legislature is fully capable of doing their will and of changing the law," Jones said. "And we will follow it."

McGregor said the court isn't writing new statutes.

"Sometimes the meaning of a statute isn't clear, and we do our best to interpret what it means," she said. "If we're wrong about that, the Legislature can amend the statute."

She said if lawmakers don't change the law after a court decision, "We then take as some signal that the Legislature thinks our interpretation was correct."

The only exception, Jones said, is the occasional case where the issue is constitutional and the court is put in a position where it has to tell legislators they have overstepped their legal authority.

Lawmakers do have the opportunity, with voter approval, to amend the constitution. And many of the measures being pushed this session would do just that.

But Jones said just because a constitutional amendment is approved doesn't make it the end of the matter. Consider the proposal to forbid the court from issuing any order that would require the state to spend more than \$1 million.

He said if something like this were approved, it ultimately would be up to the state Supreme Court to decide if that constitutional provision conflicted with others that grant certain powers to the judicial branch.

oversight of justice of the peace courts and gives that to the presiding JP.

- HCR 2031 - Bars courts from adopting rules of law that would apply to conduct that occurred before the ruling.
- HCR 2035 - Opens all the records of the Commission on Judicial Conduct to the public.
- HCR 2040 - Allows Pinal County to keep its current system of direct election of judges despite its growth.
- HCR 2042 - Raises the mandatory retirement age of judges by five years, to 75.
- HCR 2056 - Requires Senate confirmation of gubernatorial appointments to the Supreme Court, Court of Appeals and Superior Courts in Pima and Maricopa counties.

All content copyright © 1999-2005 AzStarNet, Arizona Daily Star and its wire services and suppliers and may not be republished without permission. All rights reserved. Any copying, redistribution, or retransmission of any of the contents of this service without the expressed written consent of Arizona Daily Star or AzStarNet is prohibited.

#### Ads by Google

**Sonora by Del Webb** • [www.delwebb.com/sonora](http://www.delwebb.com/sonora)

Located in Rancho Sahuarita in south Tucson is now open

**Romantic Spanish Hacienda** • [www.tucson-bed-breakfast.com](http://www.tucson-bed-breakfast.com)

Hacienda del Desierto B&B, 16 acres Views, kitchenettes, spas, secluded

**Tucson Bed & Breakfast** • [www.azcactuscove.com](http://www.azcactuscove.com)

jacuzzi's, spa retreat, pool vacation & golf packages available