

RESTORING CONSTITUTIONAL
BALANCE IN WASHINGTON'S
JUDICIAL SYSTEM

A Legislative Opportunity to Strengthen Oversight and Protect Families



WA State Basic Constitutional Design: Separation of Powers

THREE SEPARATE AND DISTINCT BRANCHES of GOVERNMENT:

- Legislative: Enacts Laws (Article II)
- Executive: Administers and Enforces Laws (Article III)
- Judicial: Interprets Laws (Article IV)

Branches operate independently but subject to the oversight of the others.

COMBATS A CONCENTRATION OF POWER IN ONE BRANCH
SAFEGUARDING DEMOCRATIC ACCOUNTABILITY*

*and individual citizen civil liberties

WA Judicial Governance Structural Trends

- 1) RULEMAKING AUTHORITY EXPANDED • GR 9 Court makes their own rules
- 2) OVERSIGHT INTERNALIZED • Court creates CJC, staffed and overseen by legal insiders.
- 3) IMMUNITY DOCTRINE ABSOLUTE • Court issues *Taggart v. State* affirms absolute immunity for judicial acts. Derivative immunity shields the quasi-judicial actors when acting in conformity with judicial functions.
- 4) APPOINTMENTS AND ELECTIONS INSULATED • Midterm vacancies filled through confidential WSBA vetting with the vast majority of judicial races uncontested in 2024 – A substantial majority of sitting judges originally reached the bench through gubernatorial appointment.
- 5) DELEGATION WITHOUT OVERSIGHT • *e.g.*, RCW 26.12 delegates family court services to counties, Judiciary confirms State's position of non-responsibility upon delegation. Federal courts treat counties as independent entities for liability purposes, creating an accountability gap when judicial functions are delegated.
- 6) EXPANDING POWER • HB 1620 (undefinable judicial discretion) and new CrR 8.3 expands judicial discretion to dismiss charges under broad standards, effectively enabling judicial override of prosecutorial decisions.

Judicial Overreach, WA State a Timeline

Period	Expansion	Authority	Impact
1980s-1990s	Courts begin issuing binding procedural rules Legal Authority: binding procedural rules without legislative review, raising Article II concerns.	GR 9; RCW 2.56.030	Rulemaking expands without legislative review
1992	Judicial Immunity Doctrine affirmed, shielding judges and quasi-judicial actors from liability.	<i>Taggart v. State</i> , 118 Wn.2d 195	Courts and their appointed quasi-judicial actors shielded from liability
1990s–2000s	Oversight internalized Legal Authority: Commission on Judicial Conduct created; lacks subpoena power, budgetary independence, or transparency.	RCW 2.64; Creation of the Commission on Judicial Conduct (CJC)	No external body with subpoena power or budget control
2000s–2020s:	Appointments and elections insulated	WSBA JRC; WA Secretary of State	Judicial power preserved through insider vetting and low contestation
Ongoing	Expanded Discretion and Statutory Erosion – e.g., Delegation of family court services to counties; HB 1620 and new CrR 8.3	RCW 26.12; <i>State v. Smith</i> , 93 Wn.2d 329	State has no liability for constitutional harms and no ability to intercede judicial failings

1) Rulemaking Without Review: Courts as Lawmakers

COURTS ISSUE BINDING PROCEDURAL RULES UNDER GR 9

- The rulemaking process is internal to the Judiciary
- No statutory requirement for legislative review, opportunity to veto, or public accountability
- Court rules (*e.g.*, GALR) expand immunity to the quasi-judicial without legislative agreement
- These circumvent legislative review and place binding procedural rulemaking primarily within the judiciary.

THIS CONCENTRATION OF RULEMAKING AUTHORITY RAISES SIGNIFICANT
SEPARATION-OF-POWERS CONCERNS

2) No Independent Oversight, No Public Recourse

“OVERSIGHT” IS INTERNAL

- The Commission on Judicial Conduct (CJC) is composed of legal insiders and lacks external subpoena power, budgetary independence, and public transparency.

IMMUNITY DOCTRINE BLOCKS ACCOUNTABILITY

- *Taggart v. State* affirms absolute immunity for judicial acts - derivative immunity shields the quasi-judicial (*e.g., special masters, GALs, court investigators*) Litigants harmed by misconduct face near-total barriers to redress

LEGISLATURE HAS NO ENFORCEMENT MECHANISM

- Cannot compel judicial compliance or review internal discipline - Oversight vacuum undermines constitutional checks and balances

WASHINGTON’S JUDICIAL OVERSIGHT STRUCTURE IS LARGELY
INTERNAL, WITH LIMITED IF ANY EXTERNAL CHECKS

3) Immunity Doctrine Expanded

BROAD GRANT OF IMMUNITY for JUDGES AND COURT-APPOINTED ACTORS (GALs, ET AL.)

- Quasi-judicial immunity shields GALs and court appointed actors from lawsuits
- Judicial and quasi-judicial immunity applies broadly to judicial acts, even when performed improperly, leaving litigants without civil remedies for many constitutional harms.
- Citizens often lack meaningful hearings, opportunities for cross-examination, or avenues to challenge adverse findings.
- The Constitution guarantees due process, equal protection, and the right to petition – barred as to special class.

IMMUNITY BARS ACCOUNTABILITY MAINTAINS THE STATUS QUO
AND EXACERBATES JUDICIARY POWER ACCUMULATION

4) Insulated Power: Appointments and Elections

APPOINTMENTS VETTED BY LEGAL INSIDERS

- Midterm judicial vacancies filled by gubernatorial appointment
- Candidates vetted by WSBA Judicial Recommendation Committee (JRC)
- No public transparency in selection or vetting process

ELECTIONS ARE FUNCTIONALLY NONCOMPETITIVE

- Vast majority of judicial races uncontested in 2024. Voter drop-off in down-ballot races exceeds 40%
- Campaign finance disclosures show limited public engagement
- Judicial incumbents retain office without meaningful public scrutiny

THE LEGAL COMMUNITY CONTROLS PIPELINE TO THE BENCH

LEGISLATURE HAS NO INTERVENTION POWER

5) Delegation Absent Accountability

CASE STUDY FAMILY COURT RCW 26.12 *Delegates to Counties*

- Counties administer GAL programs, parenting evaluations, supervised visitation
- Superior courts retain appointment and authority over these actors
- No statewide standards, oversight, or public accountability

STATE DISCLAIMS LIABILITY FOR CONSTITUTIONAL HARMS

- Litigants harmed by GALs or evaluators are told the State is not responsible
- No statutory cause of action or remedy for due process violations
- Raises significant nondelegation concerns: core state functions cannot be outsourced without accountability

CONSTITUTIONAL IMPLICATIONS

- The State cannot delegate judicial power and simultaneously disclaim responsibility – but they do and are
- Citizens are left without recourse against actors who wield state-like authority
- Judges with limited intrusion powers direct non-judicial actors (e.g., court investigators), and the judiciary then applies quasi-judicial status to those actors, extending judicial immunity and further insulating the Judiciary.

LAYERS OF IMMUNITY BUILT THROUGH EVOLVING JUDICIAL RULEMAKING PROTECT THE
SYSTEM FROM OUTSIDE SCRUTINY AND ACCOUNTABILITY

6) Amassed Judicial Power

JUDICIARY POWER COMPLETE

- Judges are legally immune for judicial acts and are predominantly elevated through internal professional networks.
- GR 9 empowers Judiciary to unilaterally mandate binding court rules
- Statutes and court rules expand unchecked judicial discretion over citizen fundamental liberty interests without ensuring corresponding due process protections, *e.g.*, family court – standard on appeal, ‘*judicial discretion*’ *e.g.* HB 1620
- CrR 8.3 allows Judges to veto state criminal charging decisions at discretion without redress

CrR 8.3 SHIFTS POWER TOWARD THE JUDICIARY IN WAYS THAT RAISE
SERIOUS CONSTITUTIONAL CONCERNS

Restore Constitutional Balance: The Legislature Must Act

IMMEDIATE OPPORTUNITIES

- Legislate a neutral third-party oversight board with independent investigatory and disciplinary power over the judiciary
- Legislate for heightened standard of review and appellate opportunity
- Legislate for appropriate oversight and estoppel access and opportunity
- Legislate for transparency in judicial review and disposition

INDEX OF AUTHORITIES

Constitutional Provisions

- U.S. Constitution, Article I
- U.S. Constitution, Article II
- U.S. Constitution, Article III
- U.S. Constitution, Amendment I
- U.S. Constitution, Amendment XIV
- Washington Constitution, Article II
- Washington Constitution, Article III
- Washington Constitution, Article IV

Statutes

- RCW 2.56.030 — Administrative Office of the Courts
- RCW 2.64 — Commission on Judicial Conduct
- RCW 26.12 — Family Court Services

Court Rules

- GR 9 — Rulemaking Procedures
- GALR — Guardian ad Litem Rules
- CrR 8.3 — Dismissal for Governmental Misconduct

Cases

- *Taggart v. State*, 118 Wn.2d 195 (1992)
- *State v. Smith*, 93 Wn.2d 329 (1980)