

POLITICS

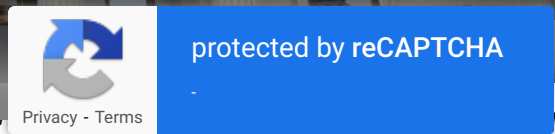
Republican lawmakers mount three separate pushes for special sessions

Separate groups of GOP legislators have called for three special sessions: one to create a partisan judiciary and two to crack down on immigration.

by Arren Kimbel-Sannit
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The Capitol building in Helena, photographed Thursday, Jan. 11, 2024. Photo by Daily Chronicle



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Three groups of Republican lawmakers announced three separate calls for a special session this week, each addressing political issues this election cycle.

Two of the special session requests, one backed by [House Speaker Matt Regier, R-Kalispell](#), and another from the hardline Montana Freedom Caucus, called for tightening immigration laws.

These requests followed news of the [arrival](#) of a Venezuelan migrant family in Flathead County last week that sparked outrage by state and federal Republican politicians who called for their deportation and speculated without evidence that the Biden administration had helped a local nonprofit transport the family to Montana.

Regier's request, co-signed by several other members of Republican legislative leadership, calls for regulating "illegal alien entry into Montana." Regier's counterpart in the upper chamber, [Senate President Jason Ellsworth, R-Hamilton](#), did not sign onto the request.

"State law must be defined to allow Montana officials the authority to regulate entry into our state," Regier's request reads. "Public safety demands that we act expeditiously on this issue. If we do not take swift action, we could see an increasing magnitude of illegal activity in Montana, specifically at our state's northern border."

He also called for a special session to redetermine the allocation of tax revenues from the state's legal marijuana program following the [demise](#) of 2023's Senate Bill 442, which passed with broad bipartisan support but fell to a gubernatorial veto that lawmakers — after a protracted legal fight — could not muster the support to override. SB 442 would have replaced the current allocation, which was created with the passage of 2021's HB 701, [sprawling legislation](#) that regulates the voter-approved recreational pot industry and lays out the distribution of the millions of dollars in tax revenue the industry generates.

The Freedom Caucus request calls for lawmakers to pass a legislative referendum asking voters to approve an amendment to the Montana Constitution stating "only a verified citizen of the United States 18 years of age or older who meets the registration and residence requirements and provides documentary proof of citizenship as provided by law

can be a qualified elector.”

Also earlier this week, a separate group of hardline conservatives called for a special session to consider legislation allowing for partisan judicial elections in the state ahead of this year’s high-profile state Supreme Court contests.

Lawmakers can enter a special session — that is, a session that takes place outside of the Legislature’s constitutionally prescribed biennial cycle — through two means. More commonly, the governor calls lawmakers into session, which allows him or her to limit the scope of the Legislature’s work. The Legislature can also call itself into a special session if a majority of lawmakers note their support for doing so via a mail poll.

That’s something the Legislature has managed to do only once in its history. Even with legislative majorities, wrangling by-mail votes for a special session is difficult. Special sessions cost taxpayer dollars and require Montana’s “citizen lawmakers” to disrupt their professional and personal lives to make the trip to Helena. And lawmakers are often reluctant to support special sessions they fear may go on to address issues outside the scope of the original request.

Two calls for a special session this year, one from Democrats and one from the Freedom Caucus, have already been made regarding property taxes. Both failed.

It may also prove even more difficult to whip votes on three concurrent requests. All of them propose starting a special session in late June, two of them address similar policy areas and none of them — at least yet — have the governor’s explicit support.

Democrats are unlikely to support any of the special session requests. Though their numbers are small compared to the Republican supermajority, their refusal will make consolidating Republican support behind any given special session request all the more essential. In a statement this week, the state Democratic Party said Republicans are proposing “burning” taxpayer dollars “so they can continue to attack and undermine the Montana Constitution, inject partisan politics into the state legal system and try to score political points during election season instead of working to provide needed tax relief to hardworking Montanans and their families.”

PARTISAN JUDICIARY PROPOSAL

The first of the special session requests to be released this week came from Reps. Jane Gillette and Caleb Hinkle. The two Gallatin County Republicans said in a press release that voters should be able to make decisions in judicial elections based on the partisan identification of the candidates. Judicial elections in Montana are currently non-partisan, as is the case in most states.

“Absent reforms, Montana’s current ‘non-partisan’ judicial election system will deprive Montana voters of the most important information about the candidates running for these seats: their party affiliation,” Gillette, Hinkle and 10 cosigners wrote in a request for a special session. “As a result, Montana voters may unknowingly cast their ballots for judicial candidates who do not share the voters’ worldview.”

Republicans have seen huge chunks of their legislative agenda fall or stall from legal challenges and amped up their criticism of the court as a politically liberal institution under the sway of shadowy trial lawyers, an echo of the conservative “tort reform” movement of the mid-20th century.

“Montana has an electorate that looks like Idaho’s, but a judiciary that looks like California’s,” Gillette and Hinkle wrote in a press release. “This is because Montana law prohibits judicial candidates from discussing their party affiliation, a restriction that always benefits the Left. Trial lawyers, public employee unions, out-of-state environmentalists, and LGBTQ activists dump millions into judicial elections.”

The political theory here is that voters who would otherwise back Montana Republicans don’t vote for conservative judicial candidates because the lack of an “R” or “D” next to their name doesn’t make it sufficiently obvious, and so judicial candidates with support from the GOP and aligned groups lose even when Republicans win other statewide elections.

Lawmakers made several attempts at either requiring or allowing for partisan judicial elections in the 2023 session, and none passed, even with the Republican supermajority.

Opponents of the idea note that the vast majority of disputes before the Supreme Court are not political and that putting the judiciary in partisan boxes could compromise the public's faith in the institution.

“If you force a partisan label on judges, you create an appearance that [litigants] aren't going to get a fair hearing,” Bruce Spencer, a lobbyist for the Montana Judges Association, told lawmakers in a 2023 committee hearing.

Montana's code of judicial conduct, promulgated by the state Supreme Court, states that a judge or judicial candidate shall not “publicly identify himself or herself as a candidate of a political organization.”

Even if Gillette and Hinkle gather the requisite support to convene a special session and even if they manage to pass legislation allowing for partisan judicial elections, it's not clear how the changes would be implemented in time for this year's elections. The deadline for candidates to file for office was March 11, and many voters will soon receive mail ballots for the June primary election, which will take place ahead of the lawmakers' proposed special session.

Sheila Hogan, the executive director of the Montana Democratic Party, panned the proposal in a press release this week.

“Voters are not telling lawmakers they want partisan judges – they're not pleading with them to revise our Constitution and undermine our system of checks and balances,” Hogan said.

IMMIGRATION CRACKDOWN

The special session request from Regier, the House speaker, calls for immigration legislation on two fronts: to “regulate illegal alien entry into Montana” and to “regulate in relation to illegal aliens, including but not limited to: nonprofits, organizations, individuals and businesses.”

That second proposal highlights the connection between the special session push and the

political controversy that erupted in Republican circles last week when a migrant family arrived at the Flathead County Sheriff's Office.

County Sheriff Brian Heino told reporters that a Venezuelan family had crossed the U.S. border with Mexico into Texas, traveled to New York and then flew to Kalispell, where they sought refuge at a homeless shelter before arriving at the sheriff's office. Heino later said that before anyone in the office could "make contact" with them, the family was taken to a hotel by Valley Neighbors of the Flathead, a local non-profit that provides housing and language support, some legal assistance and other services to new immigrants to the Flathead Valley.

Republican officials claimed the family was in the country illegally, that Valley Neighbors flew the family to Montana and argued that they should be immediately deported.

Officials with Valley Neighbors, a volunteer-run nonprofit, **have said** that they had nothing to do with the family's arrival and that they don't conspire with the Biden Administration to fly undocumented immigrants to Montana as some Republicans suggested.

"Valley Neighbors of the Flathead is a small community-supported nonprofit organization that provides humanitarian aid for immigrants in the Flathead Valley," a spokesperson for the organization told Capitolized last week. "As sometimes occurs, this week, we were made aware of an immigrant family in need after their arrival and responded by providing them assistance in accordance with our mission and the support of our community."

It's not clear how or why the family flew to Kalispell, though if they indeed entered the U.S. in Texas, Republican Gov. Greg Abbott has publicly bussed migrants to major Democratic cities like New York and Chicago, which may explain the first leg of their journey.

Venezuelans can receive temporary protective status in the U.S. "in recognition of the fact that our country is supportive of the people who are fleeing [Venezuelan President Nicolas] Maduro's regime," Helena immigration attorney Shahid Haque told Capitolized. That gives them the legal ability to live and work in the U.S. for a temporary but extendable period.

Immigration proceedings can take years to wind through the courts, Haque said.

“If they are in court it will take many years, and even if they’re not, Venezuelans are allowed to apply for [temporary protective status],” he said. It’s foolish, then, to call for their “immediate deportation,” especially without further information about their current legal status.

“That’s just not the way our immigration system works,” he said.

That may be what Regier wants to change. He told the [Flathead Beacon](#) that he’d be interested in legislation similar to what has passed in Texas and Iowa making illegal immigration a state crime and allowing state courts to order the deportation of migrants. Texas’ law is caught up in a web of litigation and is currently blocked by a federal appeals court. Civil rights groups sued over Iowa’s law [just this week](#).

Haque noted that Montana has been down this path before. His firm successfully challenged 2012’s Legislative Referendum 12, a ballot initiative passed by the voters by wide margins that required state agencies to determine an individual’s citizenship before giving them access to state services. The Montana Supreme Court ultimately struck the entirety of the law, ruling that it impinged on the federal government’s sole jurisdiction to determine immigration status.

“The law was a discriminatory attempt to drive immigrants out of the state and would have unjustly targeted immigrants with valid federal immigration status,” Haque said in 2016.

“The Montana Supreme Court has sent a clear message that the state has no business attempting to create its own immigration enforcement schemes.”

He added this week: “This decision was decisive on the issue, and if they did it again, I would challenge it again.”

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