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Gubernatorial Removal and the State High Courts

A National Center for State Courts Backgrounder

Williamsburg, VA (December 12, 2008) – On Dec. 10, Illinois Attorney General Lisa Madigan announced she is prepared to go to that state’s supreme court to ask for the removal of Gov. Rod R. Blagojevich. Illinois is one of at least 15 states with constitutional provisions that place the power of removal of a governor, temporary or otherwise, in the hands of the state’s highest court.

The most recent invocation of such a power by a state high court was in Indiana in 2003, when that state’s governor was removed after having suffered a stroke (In re O’Bannon, 798 N.E.2d 838, 2003 Ind. LEXIS 737).

Petitions and Requests to the High Court

By constitution, at least 15 states, including Illinois, allow for public officials or other public entities to directly petition the state’s highest court to remove the governor. Those states and the officials who can petition are as follows:

- **Alabama:** any two of the following: lieutenant governor, president pro tem of the Senate, speaker of the House of Representatives, attorney-general, state auditor, secretary of state, or state treasurer
- **Florida:** any three cabinet members (Currently, Florida only has three cabinet-level offices.)
- **Georgia:** any four elected constitutional executive officers, including the lieutenant governor, secretary of state, attorney general, state school superintendent, commissioner of insurance, commissioner of agriculture, and commissioner of labor
- **Illinois:** unspecified, but Article V, Section 6(d) of the Illinois Constitution states “The Supreme Court shall have original and exclusive jurisdiction to review such a law and any such determination and, in the absence of such a law, shall make the determination under such rules as it may adopt.” The Illinois General Assembly has failed to pass such a law.
- **Indiana:** both the president pro tempore of the Senate and the speaker of the House of Representatives
- **Kentucky:** attorney general

- **Maine:** legislature by a joint resolution or the secretary of state
- **Maryland:** legislature by a joint resolution
- **Michigan:** both the president pro tempore of the Senate and the speaker of the House of Representatives
- **Mississippi:** secretary of state
- **Missouri:** a “disability board” consisting of the lieutenant governor, secretary of state, state auditor, state treasurer, attorney general, president pro tempore of the Senate, speaker of the House of Representatives, majority floor leader of the Senate, and majority floor leader of the House
- **New Hampshire:** both the attorney general and a majority of the Executive Council
- **Ohio:** legislature by a joint resolution
- **South Dakota:** unspecified, but Article IV, Section 6 of the South Dakota Constitution states “The Supreme Court shall have original and exclusive jurisdiction to determine when a continuous absence from the state or disability has occurred in the office of the Governor...”
- **Utah:** both the president of the Senate and the speaker of the House of Representatives

Other High Court Actions

Two additional states have explicit constitutional provisions that may place the question of removal into the hands of the state’s highest court.

- **Louisiana:** A “majority of the statewide elected officials” makes the initial determination. The legislature must then find “probable justification for the determination that inability exists.” If they do, the finding may then be reviewed by the Supreme Court. (Article IV, Section 18, Louisiana Constitution)
- **Massachusetts:** The chief justice and a majority of the associate justices of the supreme judicial court “or such other body as the general court may by law provide” make the initial determination. The determination is then subject to approval by the legislature. (Article XCI, Massachusetts Constitution)

The National Center for State Courts, headquartered in Williamsburg, Va., is a nonprofit organization dedicated to improving the administration of justice by providing leadership and service to the state courts.

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