

# 1889 INSTITUTE

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### **1889 INSTITUTE RELEASES STUDY SHOWING OKLAHOMA SUPREME COURT'S ABUSE OF POWER**

*The Court often acts like a legislature with its judicial opinions.*

**OKLAHOMA CITY, OK** (September 4, 2019) – The 1889 Institute has published “Legislators in Black Robes: Unelected Lawmaking by the Oklahoma Supreme Court.” It makes the case that the Court often decides cases based on what its majority thinks the law *ought* to be rather than what it actually *is*. This violates the rule of law, the separation of powers, and robs from Oklahomans their right to self-government.

“Legislating from the bench is a problem everywhere, but it is particularly bad in Oklahoma because the Supreme Court ignores the very restrained role granted it by the Oklahoma Constitution,” said the study’s author, Ben Lepak, 1889 Institute’s Legal Fellow. “Oklahoma’s Supreme Court justices seem to view themselves as super legislators making public policy rather than judges deciding cases,” he said.

In the study, Lepak identifies four main methods used by the Court to illegitimately inject itself into the role of policymaking rather than proper legal interpretation. These include selectively exploiting the constitution’s single-subject requirement for proposed laws, selectively enforcing the constitution’s prohibition on special laws, declaring laws they do not like to be ambiguous when they’re actually quite clear, and declaring themselves eligible to review a law based on the dubious misuse of standing based on “public interest.”

“It is no wonder Oklahoma was added to a national ‘Judicial Hellhole’ list, considering the Supreme Court’s inconsistent and often arbitrary application of legal rules,” said Lepak. “The Court seems to decide the outcome it wants first, and then supplies whatever legal reasoning is needed to achieve that result. If the case has the potential to benefit trial lawyers, it’s pretty easy to predict how the Supreme Court will rule,” he explained.

Lepak’s study points out that trial lawyers effectively control the process of selecting Supreme Court justices in Oklahoma. He recommends fundamentally changing the way Oklahoma selects judges and justices. He pointed out that the legislature could act on its own to fix the lower courts, but changing the process for Oklahoma’s Supreme Court requires a constitutional amendment.

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### **About the 1889 Institute**

The 1889 Institute is an Oklahoma think tank committed to independent, principled state policy fostering limited and responsible government, free enterprise and a robust civil society. The publication, “Abstracting: Licensure and Regulatory Impacts in Oklahoma” and other reports on licensing can be found on the nonprofit’s website at <http://www.1889institute.org/licensing>.