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Celebrate America’s rule of law and due process legacy secured by an independent judicial branch

The following is a message from Cynthia McGuinn, 2018 National President of the American Board of Trial Advocates:

DALLAS (July 3, 2018) — As we celebrate the most historic event in our country, it is a suitable time to pause and to reflect on the system of checks and balances that make our form of government unique in the world. Today that system is being challenged.

Recent events near our southern border have captured headlines, triggered marches, and served as a topic of discussion for Americans. As National President of the American Board of Trial Advocates, I represent thousands of lawyers nationwide who believe that these problems can and should be resolved by applying the basic principles of due process, which are the true safeguards of our system of jurisprudence, inherited from our founders. A judicial system, secured by an independent judiciary, is vital to the preservation of democratic principles and necessary to insure the protection of constitutional rights, including the right to due process. Those who suggest otherwise ignore history and depart from the rule of law.

As we celebrate, we are fully aware of recent remarks from those who argue strenuously that undocumented immigrants apprehended within our border should be deported immediately, with no judges or court cases. Some have stated that judges and attorneys are unnecessary and that undocumented immigrants should be deported without a court hearing. These arguments violate longstanding constitutional rights to due process.

The rule of law, due process and independence of the judiciary are bedrock American democratic principles, which ABOTA has promoted and defended for 60 years. They arise in major part from the Fifth Amendment to the U.S. Constitution, which mandates that, “No person shall...be deprived of life, liberty or property, without due process of law.” The Founders argued that due process is a right enjoyed by every person within our border, citizen and immigrant alike. Furthermore, a right to be heard before an impartial tribunal is a prerequisite of procedural due process. Any attempt to exclude judicial officers from the process precludes the execution of their essential constitutional

responsibilities.

Another key mission of ABOTA is advancing civic education for all Americans. That mission has never been more important. Recent public comments concerning issues presently in the news show a fundamental disregard for our foundational standards. Such comments are truly disturbing when made by those at the highest levels of government or in positions of authority or influence because they may be perceived by others as being an accurate statement of the role of the judiciary or the rule of law, when they are not.

Embedded in the Bill of Rights, due process is at the core of our society. A healthy, impartial and independent court system is critical to preserving this foundation. The right to a hearing before an impartial judicial officer directed by the rule of law has steadfastly safeguarded against arbitrary and potentially unfettered governmental authority and protected all persons in our country, regardless of shifting political winds and ever changing populous movements.

Wisely, our Founders designed our courts to be the apolitical branch of government and the most insulated from politics. Rules of judicial conduct prevent judges from commenting on issues before them or engaging in any political discourse. That is why they are unable to respond to unwarranted, unfair criticisms, which are often uninformed and sometimes frankly uneducated attacks on our judicial branch.

Our system of fair and impartial justice is deservedly respected and admired throughout the world. Our system of checks and balances in government ensures that no single branch of government becomes too powerful. While the judicial branch may be the most vulnerable of the three, it has endured since the first generation of American visionaries and is of equal importance to the other branches of government.

ABOTA will always act to uphold the principles of judicial independence and due process. We urge our leaders, others in positions of power, and our fellow citizens to do likewise. Our country is entitled to it.

Cynthia McGuinn is the 2018 National President of the American Board of Trial Advocates.