

## Judicial Independence

The importance of an independent judiciary has been put on stark display recently. And while attacks on judges' decisions is neither new nor controversial, publically undermining the legitimacy of their role or attacking them personally is alarming. Challenging the validity of a judge's authority strikes at a bedrock principle of our constitutional democracy: Judicial Independence.

by: Jim lagmin, CASD President



Judicial independence is critical to the functioning of any democracy. John Adams wrote, "The dignity and stability of government in all its branches ... depend so much upon an upright and skillful administration of justice, that the judicial power ought to be distinct from both the legislative and executive, and independent upon both, that so it may be a check upon both, as both should be checks upon that." Adams, John, *Thoughts on Government* (1776). The Founders incorporated the independent judiciary into Article III of the U.S. Constitution, which allows judges to make decisions based on what is right under the law, without facing political (i.e., not getting reelected) or personal (i.e., getting fired, having their salary lowered) consequences for the decisions they make. This enables impartial justice, with judges free to decide cases according to the law. To have an independent judiciary, judges must be able to make courageous and unpopular decisions, without fear of reprisal.

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The founders understood that judges who are able to apply the law freely and fairly are essential to the rule of law. The Constitution guarantees our rights on paper, but this would mean nothing without independent courts to protect them. It is thus particularly inappropriate and deeply troubling for someone occupying a high political office to undermine the basic principle of judicial independence to decide constitutional questions. It threatens individual and collective rights, as well as the foundation of our democracy.

While the legislative and executive branches appear to struggle, I'm grateful and humbled to work in the branch of government where the facts control and civility is promoted. The rules of evidence, doctrine of stare decisis, and procedural rules that do not change with shifting political winds provide us with a stable and trustworthy judicial system. As important, they provide our clients with fair and predictable results.

The concept of judicial independence is one of the primary factors that distinguishes our government. It protects the individual from the institutions, the weak from the powerful, the poor from the rich, and even the citizens from the government. Every judge must be free to decide each case according to objective analysis and application of the law to the facts, without the influence of condemnation by a political actor. Questioning the judiciary's legitimacy undermines public confidence in the courts and the appearance of a fair and impartial justice system. We must all work to protect the independence of the courts. **TBN**