



The Constitution Project's Courts Initiative

Ten Principles for Preserving Courts' Role in American Democracy

Introduction

America has a unique form of democracy: three distinct, yet equal, branches of government. The role of the judicial branch is to consider and decide individual cases that come before it regardless of political and popular majorities.

The importance of this role to American democracy cannot be overstated. Courts can uphold the law and thereby protect our lives, property, and rights only if they are impartial and permitted to decide cases fairly. Courts can be impartial and fair only if they are free to decide cases without influence by special interests or fear of political reprisals.

The Constitution Project's Courts Initiative is a bipartisan effort of prominent and influential Americans, including former law enforcement officials, judges, policymakers, and other public officials, as well as business leaders and scholars, who are committed to preserving the crucial role courts play in our democratic society. Created in 1998, the Courts Initiative promotes public education about the role of courts as protectors of America's economic and political systems and our freedoms. The Initiative is also committed to ensuring that judges are accountable to the public.

The Courts Initiative released four bipartisan task force reports in 2000 examining federal judicial selection, public and political censure of individual judges, and legislative efforts to restrict courts' ability to hear cases. The fundamental, bipartisan principles from these task force findings and recommendations have special relevance today in light of recent attacks on courts for certain controversial decisions.

Principles

1. Our country's Founders created three separate, independent, and equal branches of government: the Executive, Legislative, and Judicial Branches, represented by the President, Congress, and judges, respectively. The success of our democracy is rooted in this doctrine of separation of powers. These branches, while distinct, must work together to provide social and economic stability and to guarantee our freedoms.
2. A separate, independent, and equal judicial branch provides a check on the powers of the

legislative and executive branches and thereby helps to maintain the constitutional balance of powers our Founders created. It is also essential to the protection of life, liberty, and equality for all Americans.

3. Judges, at both the federal and state levels, must be permitted to decide cases according to the rule of law without regard to political or public pressure.

4. While criticism of judges and their decisions is protected and even encouraged in our free society, we must be careful to avoid threats to or intimidation of judges that might jeopardize the impartiality of their decision-making.

5. Judges are held accountable to the public through a variety of means. Incorrect or unsatisfactory judicial decisions can be remedied by appeal to higher courts, legislative review, and constitutional amendment. Disciplinary mechanisms also exist that provide remedies for judicial misbehavior, including, in rare and extraordinary cases of misconduct, impeachment.

6. While Congress and some state legislatures have express authority over the courts, that authority is limited by the separation of powers, due process of law, and equal protection under the law, and other constitutional provisions. Legislators should observe such limitations and exercise caution when considering legislation to restrict courts' power.

7. Legislators should not attempt to control the outcome of judicial decisions by enacting legislation that restricts courts' ability to hear particular types of cases.

8. Legislators have a duty to ensure adequate court funding and meaningful access to the courts for all who appear before them, at both the federal and state levels.

9. The appointment of federal judges requires careful involvement by both the executive and legislative branches. Cooperation and collaboration between the President and senators is not only desirable but is essential to a properly-functioning judicial selection process.

10. Judicial candidates, both federal and state, must be committed to deciding cases based on the law and facts of particular cases, without any pre-commitments to personal or partisan outcomes.

Conclusion

Americans are rightly proud of our system of government. Indeed, emerging democracies around the world use our Constitution as a model for a free society and a stable government. A strong and impartial judiciary is essential to America's unique form of democracy. As Chief Justice William Rehnquist once noted, the independence of our judiciary is "one of the crown jewels of our system of government." The Constitution Project's Courts Initiative urges the public and politicians to safeguard this "crown jewel" by refraining from misleading and unnecessary attacks on judges, preserving meaningful access to the courts, and ensuring a thoughtful, collaborative judicial selection process. Otherwise, we will soon find that our courts

can no longer protect the social and political institutions and rights that we hold most dear.

Endorsed by the Courts Initiative's Steering Committee

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