



# **I**ndependent Courts Toolbox™

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*Informational Resources*

## **Talking Points**

### ***Judicial Independence and the Constitution***

- Madison realized the fault of the British system under which judges were appointed by the Crown and served at the pleasure of the Crown. He therefore sought to establish the judiciary as a third, equal branch of government that would enjoy independence from the other two branches and constitute a check on their power.
- Article III of the Constitution establishes the federal courts, their authority, and their independence by giving judges life tenure, making them removable only through impeachment, and stipulating that their salaries cannot be diminished during their tenure in office.
- Judges hold their offices during "good Behaviour," and like the president, vice president and "all Civil Officers of the United States," federal judges can be impeached for treason, bribery, or other high crimes and misdemeanors.

### ***Checks and Balances (federal)***

- Checks on the judiciary: Federal judges must be appointed by the president and confirmed by the Senate. The Congress must pass funding for the court system (with the provision that judges' salaries cannot be reduced) and it holds the power of impeachment. By law, judges are also subject to discipline for misconduct.
- Checks by the judiciary on the executive and legislative branches: Federal judges rule on the lawfulness and constitutionality of legislative and executive actions.

### ***Checks and Balances (state)***

- There are myriad systems by which state judges are governed. Unlike federal judges, very few state judges are appointed for life. If appointed, they may be responsible to the appointing authority for re-appointment, subject to retention plebiscites, state disciplinary procedures, or impeachment.
- If elected, judges are still subject to disciplinary procedures and the voters ultimately and periodically evaluate a judge's performance with their votes.

### ***Accountability***

- Judges should be held accountable. However, they should be held accountable for their integrity and knowledge of the law, not because of popular disagreement with a court decision arrived at through a fair and good faith interpretation of law.

### ***Independence and Public Confidence***

- Democracy requires full faith that justice will be administered with absolute impartiality. That faith is certainly challenged if we enter a courtroom knowing that our opponent has contributed substantial money to our trial judge's last election campaign or that the judge was endorsed for election by a group or corporation that opposes our position in court. That these are both legal activities offers little comfort in view of their corrosive effect on public confidence in the court system.

### ***Judiciary Different from Other Branches***

- Judges don't represent us. They represent the law. Even where we elect them, they don't represent us. They don't represent our point of view on any particular case or criminal or civil issue. Their job is to dispense impartial justice based upon a thorough knowledge of the law and a good faith interpretation of it.
- The judiciary is dramatically different from the executive and legislative branches. We expect the executive and legislative branches to be partisan representatives of the contemporary popular will. Popular will is irrelevant in a courtroom. Judges must be guided not by polls or editorials but rather by the law and their duty to protect individual rights.
- It is wrong for a judge to offer, or for the citizenry to demand, a judge's position in advance on specific issues that may come before the court. A judge must enter a courtroom every time with an open mind, deciding each case based upon a unique set of circumstances and how the law governs it, and not predisposed to rule one way based upon a publicly announced position. Asking in advance how a judge would rule on a particular case is like asking an umpire to call a pitch before it's thrown.
- Even though the courts are not inherently democratic institutions, they are still effectively linked to democracy indirectly. Where they are not elected directly, they are appointed or confirmed by officials who are, and the framework for their decisions is democratically enacted laws. Judges are also subject to impeachment, removal from office, and discipline for misconduct.

### ***Special Interest Groups***

- The public should be cautious about attempts by special interest groups to subvert the courts for their own economic or political purposes through rating systems (based on their narrowly defined issues) and campaign contributions.