

**Judicial Independence**  
**Quotes from Key Editorials**  
Assembled by the ABA Division for Media Relations and Communication Services  
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**Selected Editorials From Across the Country**

*USA Today, April 12, 2005*

Whenever appeals courts are asked to resolve contentious social disputes, one thing is certain. The losing side is unhappy. Protests against an "imperial judiciary" have existed since the earliest days of the Republic.

But the latest round, long percolating and now nearing a boil in Washington, is a particularly nasty mix of intolerance, opportunism and religious fervor. Were the effort to succeed, the result would be to undermine the independence of the judiciary and make it – and the public it serves – beholden to the beliefs of its political benefactors...

The activists argue that out-of-control judges with ideological agendas are assaulting religion and thwarting the will of the public. But it's the politicians and some advocates who seem out of control.

*Christian Science Monitor, April 19, 2005*

Congress has rarely impeached a judge – only seven times in the nation's history, and mostly for crimes. To impeach judges for their interpretation of the Constitution would undermine the finality of the law, and reinforce the notion that there's always a way to get around a ruling one doesn't like. Such a practice would turn Congress itself into a court, violating the judiciary's independence, and prompting judges to look over their shoulder to consider what Congress might think of a ruling.

Congressional limiting of federal jurisdiction is also rare, concerning far less controversial subjects than God and the law (for instance, establishing a dollar threshold for certain cases to be heard). Meanwhile, barring an issue from federal courts simply shoves it down to the state courts.

The federal courts are not infallible. And they've had to take on more social issues because legislatures have failed, through extreme partisanship like DeLay's, to resolve these issues.

The way to address disappointment with judges is not through congressional activism, but through the usual mechanisms: proper vetting of judicial appointments and the election of able politicians who make and confirm those appointments.

*Los Angeles Times, April 25, 2005*

These attacks on the judiciary threaten the constitutional separation of powers that has long allowed this nation's government to function more effectively than those of some of its neighbors. Perhaps no one has expressed this more clearly than conservative Chief Justice William H. Rehnquist in his traditional year-end report on the federal courts: "The Constitution protects judicial independence not to benefit judges, but to promote the rule of law: Judges are expected to administer the law fairly, without regard to public reaction."

*Newsday, April 19, 2005*

Republican presidents have appointed commanding majorities of the judges on both the Supreme Court and the powerful federal appeals courts. The real beef from the right is that not enough of those judges toe its ideological line. But that's as it should be. Judges should be clear-eyed arbiters of the law and conscientious guardians of the Constitution, not warriors in service of any particular ideology.

*Miami Herald, April 17, 2005*

The judge-bashing coming from critics of the judicial system was bad enough when it was confined to rhetoric from a noisy few on the outer fringes of the far right. Now, elected officials who wield power in Washington have made matters much worse...

This is reprehensible, irresponsible conduct by people who should know better. Rep. Delay and his cohorts are sworn to uphold the Constitution, not undermine its most basic tenets. Yet they don't seem remotely familiar with the Constitution's demand for co-equal branches of government and a distinct separation of powers....

If this anti-judicial crusade is allowed to succeed, the Constitution itself will be trampled. Federal judges are nominated by the president and confirmed by the Senate for lifetime appointments. This ensures their independence and preserves our system of checks-and-balances. It distributes power to reduce the threat of tyranny. If Congress can dictate the outcome of lawsuits and trials, as it attempted to do in the Schiavo case, why have courts and judges? Rent a lobbyist instead.

*New York Times, April 5, 2005*

Through public attacks, proposed legislation and even the threat of impeachment, ideologues are trying to bully judges into following their political line. Mr. DeLay and his allies have moved beyond ordinary criticism to undermining the separation of powers, not to mention the rule of law....

Last week, Judge Stanley Birch Jr., a conservative member of the United States Court of Appeals for the 11th Circuit, based in Atlanta, declared that in the Schiavo case, "the legislative and executive branches of our government have acted in a manner demonstrably at odds with our founding fathers' blueprint for the governance of a free people -- our Constitution."

Judge Birch is right, but he should not be such a lonely voice. The founders established a system of government in which the three branches -- legislative, executive and judicial -- act as checks and balances for one another. Republicans in Congress and the Bush administration, unhappy with some rulings of the judiciary, are trying to write it out of its constitutional role. The courts will not always be popular; they will not even always be right. But if Congress succeeds in curtailing the judiciary's ability to act as a check on the other two branches, the nation will be far less free.

*Philadelphia Inquirer, April 10, 2005*

An independent judiciary must be a co-equal branch of government. Judges must be shielded from the pressure of mob politics. Their job is to interpret fairly and impartially how the law applies to particular sets of facts, not to bend this way or that based on the passions of the moment.

*Baltimore Sun, April 6, 2005*

IN MANY QUARTERS, judges tend to be regarded much like umpires. Those who agree with a ruling think the judge is brilliant. Those who don't often express their disappointment in epithets.

Foul language and the occasional tossed cup are usually the extent of hostility umpires face. Threatened retaliation against judges is growing far more fearsome...

But judicial overreaching, like beauty, seems to be in the eye of the beholder. Republicans don't complain about the Supreme Court decision that settled the 2000 election dispute, though it was a bitter pill for the losing Democrats to swallow.

And it's not judges who are responsible for the divisiveness and polarization of American politics, but the politicians and interest groups whose inability to resolve disputes frequently leaves nowhere else to go but the courts.

*Hartford Courant, April 7, 2005*

Both outbursts [comments by Rep. Delay and Sen. Cornyn], along with calls by other politicians for the impeachment of judges, seem designed to intimidate judges into following an ideological line, not the requirements of justice and the Constitution.

Judges must be impartial. They must maintain their independence and act as a check against the power of the other two branches of government. The pressure on them brought by politicians is reprehensible.

*Denver Post, April 2, 2005*

If any additional proof were needed about the genius of America's founding fathers, the manic demagoguery of U.S. House Majority Leader Tom DeLay, R-Texas, surely provides it.

DeLay recently demanded that Congress seize the power to determine outcomes of specific cases in federal courts - never mind that his approach would defy the system of checks and balances at the heart of the constitution he has sworn to uphold...

Exactly what punishment DeLay plans to mete out to the judges who did their duty under the constitution isn't clear, though some of his fellow fulminators have laughingly suggested impeachment. Before such a spectacle occurs, however, we hope one of America's thousands of dedicated high-school civics teachers will take DeLay aside and explain to him what the words "the Supreme Court shall have appellate jurisdiction, both as to law and fact" means.

By trying to predetermine the issues of law and fact that the constitution reserves for the courts, DeLay is basically demanding the power to pass a bill of attainder. Before the American Revolution, the British Parliament used that tactic to imprison or execute political opponents who had committed no crime. Rebelling against such tyranny - and foreseeing the day when a Tom DeLay might rise in America - the founding fathers wisely mandated: "no bill of attainder or ex post facto law shall be passed." (Article 1, Section 9.)

The more we see of Tom DeLay, the more we revere the wisdom of Thomas Jefferson, James Madison and the other founders.

*Seattle Post-Intelligencer, April 13, 2005*

"Ever since an 1803 decision, *Marbury v. Madison*, judges have had the power to overturn laws that conflicted with the Constitution. That's a key protection for constitutional rights.

The framers understood the need for checks and balances. The Constitution artfully constructed a balance among the three branches of government: executive, legislative and judicial. The branches of government are independent of one another. For the courts, becoming subservient to Congress, for instance, would be an express route to the rule of men, not laws...

Inflamed public passions have always been a threat to justice, liberties and individual rights. The temptation to want politically correct judicial rulings can visit any political group, left or right, that obtains a strong sway over power. Witness Democratic President Franklin D. Roosevelt's attempt to expand the U.S. Supreme Court and pack it with friendly justices when its decisions ran against his New Deal programs. Wisely, Congress did not go along...

There has been remarkably little outcry over the attempts to erase well-established constitutional principles and turn back the clock on fundamental protections. A country with a greater appreciation of its own government, Constitution and freedoms would be howling.

*Sacramento Bee, April 15, 2005*

Calm, thoughtful heads in Congress and the public will have to prevail against these attacks on the judiciary. It's time to return to first principles, to remind Americans why the Founders created an independent federal judiciary to check the power of the president and Congress.

An independent judiciary was a remedy for grievances against King George III. The Declaration of Independence states: "He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries."

To avoid having judges dependent on the will of the president and Congress in the American republic, the Founders created a Constitution that gave lifetime appointments to federal judges and prohibited Congress from diminishing judicial salaries. As Alexander Hamilton wrote in the Federalist Papers, those provisions were aimed at creating a "barrier to the encroachments and oppressions of the representative body."

*Buffalo News (New York), April 11, 2005*

The American government, with its system of checks and balances, is the envy of the world for good reason. The three branches of government created by the framers of the Constitution are a model for democracy around the world, guided by the principles of public representation and equal justice under the law.

But of all three branches, the judicial branch is probably least understood....

Unlike the executive and legislative branches, federal courts are not answerable to the public. Judges, once appointed, hold their jobs for life. They are, by design, largely immune to political and public pressure and carry enormous power to narrowly or broadly apply laws, or even strike them down altogether if they're considered unconstitutional. Their sole loyalty to the laws that govern us is meant to preserve their impartiality....

These judges have been forced to uphold the independence of the judiciary under extraordinarily difficult circumstances. For that they should be respected, not punished.

