

Protect the Independence of our Courts

Recent columns in this and other newspapers in the state have levied attacks on how we select our judges under the Missouri Court Plan. Special interest groups have erected bill-boards in parts of our state railing against “activist” judges. A web site purports to know confidential information about lawyers who have applied for judicial vacancies and even claims to have had inside information about who the Appellate Judicial Commission would select for a vacancy on our Supreme Court even before it had completed its interview of candidates. Our governor has tried to skew the selection process by espousing that he should be able to appoint judges who agree with his political views. Various members of the legislature would hold long overdue pay raises for judges hostage until judges in effect pledge subservience to the political views of the legislature.

Don't these increasingly strident proponents of politicizing our legal system understand the principles of the separation of power in the framework of our government? Don't they understand or believe in an independent judiciary as one of the co-equals in our three branches of government? Do not our Constitutions mean anything to them.?

It can be argued that the bedrock upon which American democracy rests is the independence of the judiciary. It is the judiciary, with its unique authority to declare the law, that shields us from the potential tyranny of presidents who would be kings or legislators who would be commissars with absolute powers.

Founder Alexander Hamilton, writing in Federalist 78, said “The complete independence of the courts of justice is peculiarly essential in a limited Constitution.”

Although the import of Article III of the U.S. Constitution may not have been fully developed until Chief Justice John Marshall's declaration of the Court's supremacy in *Marbury v. Madison* (1803), over two hundred years of American jurisprudence have proven the importance of the independence of the courts and their judges and their separation from the politics of the other branches..

Presidents and governors may have the right ultimately to appoint judges. But that power is restrained by the “advice and consent” requirement of the Constitution, in the federal system, and by the non-partisan nomination process approved by the electorate in the long existing Missouri Court Plan..

Courts and judges are not subservient to either the executive or the legislature: courts are their independent, separate co-equals.

Lawyers and citizens who believe in these doctrines of separation of powers and independence should feel outrage at those who would subvert these principles to narrow partisan political agendas.

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