

We Count on Judicial Independence

Judicial independence is essential to the integrity of our justice system and to public confidence in the rule of law.

The relationship between judicial independence and impartiality

When you go to court to challenge a traffic ticket, you expect the judge to hear your side of the story and decide your case on the facts -- not just rule against you because the cop is the judge's nephew. You expect that the judge has not pre-judged your case and is not "pre-judiced" (or biased) against you -- say, because of how you are dressed. The same is true if you end up in court on a business dispute or a disagreement with your landlord: You and your opponent are both entitled to expect that the judge will be impartial.

Being impartial means that the judge has no preference for who wins; that is, the judge has no skin in the game and no reason to take sides. Because judges respect the need for impartiality, they routinely "recuse" themselves from deciding cases in which there is any reason to suppose that they might have even the slightest skin in the game. In an individual court case, the potential for lack of impartiality, or bias, is often plain. Maybe your case has been assigned to a judge who is your next-door neighbor, or to one whose son owns the company suing you. Either way, that judge should not hear your case. Impartiality is represented by the *scales of justice*: no thumbs are allowed.

To be impartial, a judge must first be *independent*. Judicial independence means that judges -- like umpires -- are free to call the shots as they see them. They have no ulterior motives. They are uncorrupted by outside influence. A judge who is not independent cannot be *impartial*.

What happens if forces outside the courtroom bring pressure to bear on the judge in a way that might influence the outcome of your case? For example, what if the judge believes that imposing lots of traffic fines is a path to appointment to a higher court? What if the judge fears the possibility of violence or intimidation -- either personally or towards family members? In either case -- whether through corruption (which leverages greed) or intimidation (which leverages fear) -- if the judge succumbs, then the judge is no longer independent. For reasons having nothing to do with your case, the judge whose independence is compromised now has an ulterior motive -- and a reason to take sides -- and therefore cannot be impartial.

Any attempt to destroy judicial impartiality by compromising judicial independence, whether through promises of reward or threats of harm, whatever the source or the motivation, is simply wrong: It undermines our justice system and public confidence in the rule of law.

Judicial independence in our federal courts

Judicial independence in our federal courts is key not only for proper determination of individual disputes, but also for our system of government. Federal courts, like state courts, decide cases involving individuals and companies. However, under the US Constitution, the Judiciary is one of three co-equal branches of our federal government, along with the Executive and Congress. As such, the Judiciary has the sole authority -- and the essential duty -- to make sure that neither the Executive nor Congress oversteps the bounds of its own constitutional powers. To make sure the Judiciary can perform this essential duty, the Constitution makes the Judiciary independent of the other two branches.

In fact, the Declaration of Independence listed as a specific grievance against the King:

HE has made Judges dependent on his Will alone, for the Tenure of their Offices, and the Amount and Payment of their Salaries.

That's why the Constitution secures the independence of the Judiciary by giving our federal judges lifetime appointments: Once appointed by the President and confirmed by Congress, our judges are free to call the shots as they see them without fear of losing their jobs, no matter the preferences of whoever is in power in the other branches. Our judges are thus constitutionally secure in their ability to act impartially regardless of politics, which is as it should be. It allows everyone to have confidence in the integrity of our justice system and the rule of law.

Common concerns

Q. *Can judges be removed if powerful people don't like their decisions?*

A. Sometimes a person who dislikes a judge's decision will publicly question the judge's honesty and motives -- or even call for the judge to be removed by impeachment. Though it is possible and even proper to impeach a judge for misconduct in office (for example, for taking bribes), making a decision that someone in power dislikes is *never* impeachable misconduct. To suggest otherwise is simply wrong: It undermines public confidence in our justice system and the rule of law.

Q: *What if a judge makes a mistake?*

A: Judges are human. Even with the best intentions, they can and do make mistakes. The safeguard against judicial error is the appeals process.

Q. *What if a particular judge makes lots of mistakes?*

A. The process for selecting judges varies. In some jurisdictions, judges are elected, in others they are appointed, and some even have hybrid systems. But whatever the process, every jurisdiction has its own safeguards around selecting judges. All jurisdictions also have processes to address complaints about judicial behavior. While no system is perfect, everyone has an interest in having only judges who are competent, honest, impartial -- and most of all, independent.

Q. *Aren't all judges influenced by their own biases and politics?*

A. Yes and no. As our fellow humans, judges can't completely ignore their own personal views. However, judges swear an oath to uphold the Constitution and follow the law. Their job is to do justice to the parties in their courtrooms based on the merits of the parties' positions and not on their own personal feelings. As a rule, judges take their oaths very seriously indeed.

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