

## **On Constitution Day, Let us Reflect on the True Role of the Judiciary**

On September 17, 1787, delegates to the Constitutional Convention met to sign the document they had spent the previous four months drafting.

That document, the U.S. Constitution, outlines the basic structure of our nation's government. The first three articles of the constitution identify three co-equal branches of government with separate and distinct powers and responsibilities.

The Constitution outlines the separation of powers: the Legislative branch makes law; the Executive branch executes the law; and the Judicial branch interprets and applies the law.

September 17<sup>th</sup> of each year is designated Constitution Day in acknowledgement of the day our current government was formed. This year, as we mark the 231<sup>st</sup> anniversary of the Constitution's signing, we should reflect on the true role of what is commonly referred as the third branch of government—the Judiciary.

The framers of the constitution sought to make the Judiciary an independent branch of government that could go about its work of interpreting laws and settling legal disputes without having to consult members of the other branches of government—or survey public opinion—before making decisions. The desire to keep the Judiciary free from such influences is why U.S. Supreme Court Justices—once appointed by the President and confirmed by the Senate—serve life terms.

By contrast, State Court Judges do not serve life terms. They typically are elected to the bench and face retention elections every six years. Still, they are fair and impartial arbiters of the law, carrying out their duties without regard to political whim or popular opinion.

### **Differences between Branches of Government**

Members of the executive and legislative branches, at both the federal and state levels, regularly interact with lobbyists and members of special interest groups. They also are likely to review public opinion polls and news stories when deciding what position to take on a particular law or policy. The members of those branches of government are elected to represent the public; they require public input to do that properly.

The Judiciary plays a different—but very important—role in our Constitutional form of government.

The Judiciary is not a political or representative branch of government. Its duty is to uphold the law, and make decisions in accordance with the law, even when those decisions go against popular opinion. Judges resolve disputes based on the law and the facts presented in individual cases.

The Judiciary also is the branch of government that protects the civil rights and liberties granted to all citizens within the Constitution. Part of that job is ensuring that the other branches of government recognize the limits of their powers.

Sometimes, making an unpopular decision will cause members of the public to label a judge a liberal or a conservative. In extreme cases, as we have seen recently in New Mexico, judges have been threatened with bodily harm by people who disagree with their decisions.

Judges know they are bound to follow the laws of the land—the U.S. and State Constitutions, as well as state and federal laws. They also must adhere to rules of court procedure and a judicial code of conduct, which strictly forbids letting personal feelings enter into their decision making.

William H. Rehnquist, a former U.S. Supreme Court Justice stated: “A Judge is bound to decide each case fairly, in accord with the relevant facts and applicable law, even when the decision is not the one the home crowd wants.”

That is exactly how the framers of the Constitution expected judges to behave when they laid out the structure of our current form of government 231 years ago. The framers, in essence, charged the Judiciary with protecting our constitutional rights. We should remember that not just on Constitution Day, but every day.