

## Op-ed | **Ex-N.J. Justice Applauds Roberts for Independence Amid Political Strife**

by *Peter G. Verniero*

Like many others before me, I have long held the view that the rule of law is the center beam of American democracy. If we cherish democracy, we must protect the rule of law. It's that simple.

Protecting the rule of law means maintaining a system under which the law rises above any one individual and respecting the three governmental branches that collectively enact, enforce and interpret the law.

At least that's what the founders had intended when they embodied the rule of law in the pages of the Constitution.

Nowadays, the Constitution seems to be undergoing a stress test. The executive and legislative branches are at odds, to put it mildly. We are divided as a people, egged on by polarized forces that dominate the national stage. And our political discourse has sunk to new lows.

Against that backdrop, there is still a governmental branch capable of rational debate, one best suited to guide us to a higher ground: the judiciary.

Interestingly, the judiciary is the one branch of government that springs from the other two. It exists only because the chief executive nominates candidates to the bench and the Senate confirms them.

Put differently, the judiciary – America's unelected branch – is wholly created by the two elected branches. But once created, the judiciary is authorized by the Constitution to act independently of the president and Congress.

And that is precisely why the Constitution ultimately places the rule of law in the hands of judges, most especially the justices of our federal Supreme Court.

As Alexander Hamilton aptly stated in Federalist No. 78: Without the "complete independence" of the judiciary, "all the reservations of particular rights and

privileges (expressed in the Constitution) would amount to nothing."

Which brings me to Chief Justice John G. Roberts and his recent quiet acts of institutionalism. First, the chief justice voted to stay a Louisiana law regulating abortion that seemed very similar to a Texas law struck down by the Supreme Court in 2016.

To be sure, it was a procedural vote, which does not commit the chief justice on the merits of the case should the Court decide to hear the underlying appeal, which now seems likely. Still, it was a striking display by the person in the Court's center chair.

Then, in a separate case, Chief Justice Roberts voted to return a case to a lower court for its failure to follow the high court's instructions on how to evaluate whether a death-row inmate was mentally capable and thus eligible for the death penalty.

In both cases, the chief justice, known for his conservative jurisprudence in nearly all areas of law, sided with those most associated with opposite held views, namely, the so-called liberal wing of the Court.

A brief digression: I try to avoid placing labels on judges because such words as "conservative" and "liberal," when applied to a court, oversimplify the judicial function. They also reinforce the notion of a court as a political body, which it decidedly is not. But the popular use by commentators of these shorthand references makes them sometimes unavoidable.

The critical point is this: In crossing the jurisprudential aisle so to speak, the chief justice stood up for the Court's institutional decisions, even those with which he might disagree. And in so doing, he acted consistent with the rule of law.

In his own way, the chief justice seemed to be living up to a statement he made this past November, on the eve of Thanksgiving: “We do not have Obama judges or Trump judges, Bush judges or Clinton judges. What we have is an extraordinary group of dedicated judges doing their level best to do equal right to those appearing before them.”

“That independent judiciary is something we should all be thankful for,” the statement ended.

So in the midst of national division and political uncertainty, let’s recognize the workings of the quiet, unelected branch. The one entrusted to uphold the center beam of our democratic system.

---

*Peter G. Verniero formerly served as a justice of the New Jersey Supreme Court and state attorney general.*