

## Op-ed | Supreme Court Justices' Robes Aren't Red or Blue

by Peter G. Verniero

The recent redistricting decision of the U.S. Supreme Court puzzled headline writers and more than a few legal pundits. Not because of what the court held — that Alabama's redistricting map had diluted the power of Black voters and thus likely violated the Voting Rights Act — but because of who wrote and joined the majority opinion.

In *Allen v. Milligan*, Chief Justice John Roberts reaffirmed settled voting protections guaranteed by federal law and was joined by so-called fellow “conservative” Justice Brett Kavanaugh and so-called “liberal” Justices Sonia Sotomayor, Elena Kagan and Ketanji Brown Jackson.

In so doing, the majority defied political labels because of what presumably they believed, in their best collective judgment, the facts and law required. Somewhere Alexander Hamilton is smiling.

Still, there is the troubling fact that so many court watchers would be surprised by a majority lineup that “went against type.” But we should not be surprised by such surprise. It reflects the sad reality that our nation's highest court increasingly is seen as no more than another political branch, subject to the vagaries and influences of partisan politics.

The judiciary has become engulfed in the divisiveness and rancor that today passes for political discourse. This hyper-partisanship affects nearly every aspect of public life. It is especially prevalent in the judicial confirmation process. When nominees are subjected to a political grilling by either party, it is no wonder that they arrive at the Supreme Court with their respective robes, to paraphrase NBC's Chuck Todd, looking more red or blue than black.

It does not have to be this way. The Senate confirmed Antonin Scalia, an icon of the right, by a bipartisan

vote of 98-0, and did much the same when confirming Ruth Bader Ginsburg, an icon of the left, by a vote of 96-3. To be sure, it mattered who sat in the Oval Office at the time of their nominations and which party controlled the Senate.

But those political realities seemed to yield to the higher purpose of preserving the judiciary's reputation as an independent branch — one designed to resolve disputes free of partisan influences, as Hamilton and the other founders envisioned.

It's hard to imagine returning to those days of bipartisanship, but we must try. For starters, we should resist the temptation to apply labels to judges whenever we explain their decisions, especially those with which we disagree. The Alabama redistricting case may make it easier for us to describe the court in institutional rather than ideological terms.

It is perhaps no accident that the decision was authored by Chief Justice Roberts who famously urged an end to judicial labeling when he said in 2018: “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.”

Those of us who believe deeply in an apolitical judiciary need to express our views. In the end, it is still we the people who ultimately can shape the destiny of our government. If we cherish the rule of law — the idea that legal principles, not parties or personalities, are the collective polestar toward a more perfect Union — then we must urge our leaders to do everything in their power to end or reduce the politicization of the courts. If not, we are truly sunk.

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