

PRESIDENT'S PERSPECTIVE

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Politicization of the Courts Poses Critical Threat to Judicial Independence



New Jersey residents beware.

An arms race is on between the executive and legislative branches of the New Jersey government to politicize the judicial branch and subordinate its co-equal status. Despite the clear language of Article III of the New Jersey Constitution of 1947, and more than 237 years of unequivocal state history, we are

today confronted with an assault that threatens the viability of the third branch of government.

Make no mistake. Continued attacks on the Judiciary denigrate the separation of powers and the independence of the courts, resulting in a blatant attempt to instill mistrust in the court system, mislead the public, influence the judicial process and ultimately subvert the judicial branch.

We have reached a dangerous tipping point where, as Justice Barry T. Albin so eloquently put it when he recently addressed attendees of the New Jersey State Bar Association's Annual Meeting, judges must today be concerned that "doing justice is a bad career move."

Consider the evidence.

First, our Governor broke over 60 years of tradition and refused to reappoint for tenure Justice John Wallace, despite his being the Court's only African-American and his record as a pragmatic jurist, pointing to an "out of control" bench. Next, he attacked Justice Albin who dared to question the school aid funding formula for the state's poorest students. He accused former Mercer County Assignment Judge Linda Feinberg, a role model for thoughtful jurisprudence, of "cronyism" when she ruled against the state on the issue of judicial compensation. Now, the Governor has lobbed a grenade at the Court's top spot, our untenured Chief Justice.

Recently, after the Supreme Court ruled 5-2 against the Governor's plan to unilaterally eliminate the state Council on

Affordable Housing, he labeled the opinion written by Chief Justice Stuart Rabner as "activist" and the decision as an arrogant failure of the Court, all while renewing his vow to remake the Judiciary. The result of those words is rampant speculation that Governor Christie will make the historically unprecedented move of refusing to reappoint Rabner when he comes up for tenure next year.

While the Governor has a First Amendment right—and perhaps the political obligation—to express his disagreement with Court decisions, he has made it a habit to espouse hostile rhetoric coupled with a not-so-veiled threat of retaliation. That is simply unacceptable. To paraphrase Justice Albin, judges cannot be looking in their rearview mirrors when rendering an opinion.

But, sadly, our Governor is not the only one to blame in this unique brand of political interference. The legislative branch, too, is at fault as it has repeatedly allowed senatorial courtesy to obstruct appointments and has refused to hold confirmation hearings for judicial candidates, leaving court-houses around the state struggling with record numbers of judicial vacancies.

Most egregious is the outright refusal for months to hold hearings on the two candidates nominated by the Governor to fill vacancies on the New Jersey Supreme Court. While the Legislature has expressed a legitimate concern that the Governor's appointments will shift the traditional balance of power on the Court, the language of the New Jersey Constitution is clear—"the Governor shall nominate and appoint" the Justices of the Supreme Court. The Senate has a commensurate constitutional obligation of "advice and consent."

The New Jersey State Bar Association believes in the strength and integrity of our justice system. Its integral role in our republic is unquestioned and should not be undermined by politics. We defend what former United States Supreme Court Chief Justice William Rehnquist called the "crown

jewel” of our democracy.

As citizens, we should all be worried about what is happening in the political sphere. These attempts to intimidate the courts and unduly influence the judicial process are unwarranted and irresponsible. The role of the courts is to protect every citizen’s rights. And they provide a critical and necessary balance in our government.

Our judges are not issuing sweeping decisions based on their preferences. Rather, they are closely examining the facts of each case, applying the law in a fair and even-handed manner, and issuing reasoned decisions. That is all we can ask of them. That is all we should ask of them.

The courts are accountable to the Constitution, the Bill of Rights, and the laws of our great state. We cannot stand by and allow them to be subject to the whims and vagaries of political battles.

We must learn from the lessons of history. In order to stop an arms race, reasonable people must come together, reexamine their entrenched positions and recognize the truth. This battle must end so that our strong and independent Judiciary—the third and co-equal branch of government—is preserved. ∆∆