

Keep Our Republic's Article III Coalition: Mission Statement

The Article III Coalition (“Coalition” or “A3C”) consists of retired Federal district and circuit judges who came together to support, preserve and defend judicial independence as the foundation of the Rule of Law and of our democracy. The Coalition is a non-partisan, civic education initiative of Keep Our Republic, a 501(c)(3) non-profit organization. Although not a lobbying entity, the Coalition hopes to inform the public and policy makers, including Congress, by correcting common misperceptions and rebutting misstatements by some politicians about the role of the courts. Having all served at length in the U.S. judiciary, we know first-hand what the proper role is and what it requires by way of public understanding and insulation from improper political pressures.

As former judges ourselves, we also know that sitting judges cannot respond effectively to verbal attacks no matter how unfounded. Sitting judges are expected to limit themselves largely to speaking through their opinions and rulings. As retired judges, however, we are now free of such restrictions and thus able to respond fully to attacks on sitting judges. We are intent on defending the independence of judicial decision-making from personal attacks and political pressures.

The Coalition seeks to become the trusted source of accurate educational information and reasoned discourse in this era of mistrust and disinformation. In recent years, our country has witnessed unprecedented attacks on judges by certain politicians, their supporters and others. Such verbal assaults need to be clearly countered and firmly condemned.

Presently, the Coalition has 44 members with more still joining. We were appointed under every administration from the late-1970s through 2016. Our members were appointed nearly equally under Republican and Democratic administrations. We are of highly diverse backgrounds in all respects, but united in our dedication to defending the courts and assisting the public and politicians to understand the proper role of courts in our democratic republic.

In short, the role of courts is to impartially administer justice under law. Judges must apply the law as written in the Constitution and the statutes. They are not supposed to be advancing any political agenda of anyone in Congress or a White House, not even any President. To serve the ends of justice, judges must be insulated from all political pressures.

To be trusted by the citizenry, to have credibility in deciding lawsuits, judges need freedom to faithfully follow the law and the facts, unconcerned about political implications and free from personal insecurity. In the words of the judicial oath, judges must decide cases “without fear or favor.” In practical terms that means without fear of personal harm or

retribution. If the public suspects that politics, not law controls, it cannot confidently accept court rulings. Yet the public's voluntary acceptance is critical.

This problem is at its apex when any administration in power constantly attacks judges with whose rulings it disagrees. Everyone must remember, it is not the job of judges to advance the agenda of any President, politician or political party. Rather, their job is to ignore such agenda and simply apply the law impartially and neutrally. In doing so, of course, judges must maintain the highest of ethical standards, including complying with the Code of Conduct for United States Judges.

Applying the law requires judges sometimes to declare unlawful, and thus null and void, the actions of the Executive or Congress as when such actions violate the Constitution, precedents interpreting it or statutory law. Usually, judges do so by issuing injunctions to prohibit continuing violations. Those injunctions are enforced, when necessary, by the power of courts to hold violators, including all Government officials, in contempt. Sanctions imposed by judges can include exclusion from future court proceedings, fines and in extreme cases even imprisonment.

Of course, judges, like all officials, may be properly criticized by those who dislike their rulings. But threatening retribution or proposing impeachment based solely on such disagreement is neither proper nor tolerable. It is dangerous and destructive of democracy. All the worse when such threats come from high officials. Likewise, publicly labelling judges as "Marxist" and "rogue" "lunatics" and the like is intolerable.

Indeed, judges are accustomed to harsh criticism. After all, in nearly every case the losing party expresses its unhappiness with the judge's ruling. Others often do as well. Freedom of speech protects such commentary. But actual threats and intimidation are another matter entirely.

Of course, to uphold the Rule of Law, not the preferences of a White House or any political party, judges need freedom from the threats of physical violence to themselves and their families. But it also means freedom from all forms of intimidation. Of particular concern lately are psychological threats such as various incidents of "doxing", "swatting" and late-night deliveries of unordered pizzas to judges' homes, some bearing the name of the murdered son of the U.S. district judge who was herself the intended victim. (For our judicial system to function properly, since judges rely on lawyers, we also recognize that lawyers and law firms need to be independent, and free from such attacks and intimidation.)

In our current hyper culture, some persons are so unstable they can be manipulated into threatening and harassing judges, even harming them, while believing they are performing a patriotic duty. When those upset with court rulings, whether members of the general public

or Government officials, make statements on social media or elsewhere that they know or should know are likely to incite violence against judges, that is surely improper and intolerable.

The U.S. Marshals Service has protected Federal judges from known physical threats for many decades. This year the Marshals Service has reported a sharp increase in such threats. Protecting against psychological threats and harassments, however, may be more difficult. That the Marshals have long admirably carried out their statutory duties on behalf of the judiciary may itself now be in question since they are under the control of the Department of Justice.

In the American system, the principles of judicial independence described above are long and well established. They were not set in place by our Coalition, but by the Founders as reflected in oft-quoted statements of Thomas Jefferson in letters, Alexander Hamilton, James Madison and John Jay in the Federalist Papers, Chief Justice John Marshall in famous decisions, and more recently by Presidents Eisenhower and Reagan and Chief Justice John Roberts. They are embedded in the Constitution and the statutes passed by generations of Congresses.

The Coalition will remind all citizens of these fundamental facts about judicial independence from political control or from threats of violence that make the Rule of Law possible and can forestall tyranny.

In the coming months, the Article III Coalition will elaborate on specifics, explaining the mechanisms available to help protect the ability of the courts to impartially apply the law without risk of being influenced by threats like those summarized above or any other improper pressures. Maintaining the Rule of Law and thereby the constitutional checks and balances crucial to our system is not only our chosen mission, but in these challenging times the role of all patriotic Americans.