

INTRODUCTION TO THE JUDICIAL FOCUS OF IDAHO JOURNALISTS' AND TEACHERS' INSTITUTES (2025)

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CIVIC EDUCATION, THE RULE OF LAW, AND THE JUDICIARY: “A REPUBLIC ... IF YOU CAN KEEP IT”

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As journalists and teachers are acutely aware, we live in hyper-partisan times. Public issues are viewed through lenses of identity factions and culture conflicts. Political parties appear to be increasingly dominated by their most extreme constituencies. Our democracy is struggling, seemingly adrift without an anchor.

Struggle is not new in the American experience, but there has been an anchor. On September 17, 1787, in Philadelphia, citizens gathered outside Independence Hall as word spread that the deliberations of the Constitutional Convention had concluded. Seeing Benjamin Franklin emerge from the building, a woman in the crowd asked him: "[W]hat have we got—a republic or a monarchy?" Without hesitation, Franklin responded, "A republic . . . if you can keep it." [1]

Franklin and his colleagues created a distinctive republic — not merely a representative democracy (the traditional meaning of a republic), but a *constitutionally framed* republic in which representative government was combined with the constraint of a written charter. In a single document, the framers addressed two historical abuses of power -- the tyranny of the few over the many, and the tyranny of the many over the few. To prevent concentrations of power leading to tyranny of the few over the many, the charter written in Philadelphia dispersed power horizontally across three separate but connected branches of government, and vertically between

the nation and the states. [2] Then, to protect the few from tyranny by the many, the charter – combined with the famous first ten amendments adopted during the ratification process – set forth fundamental rights that could not be overridden by majorities of the moment. In this respect, the resulting Constitution of the United States – although not perfect – was a stunning achievement.

The Role of the Judiciary

The framers entrusted the task of safeguarding this achievement – maintaining the dispersion of power, and preserving the enumeration of rights – to an independent and impartial judiciary. Many of the Constitution’s framers had been present years earlier, when the Declaration of Independence was signed and presented in the same building at Philadelphia. In the Declaration they decried the lack of independence and impartiality among colonial judges, whom King George III had “made dependent on his Will alone for the tenure of their offices, and the amount and payment of their salaries.”

An independent and impartial judiciary was arguably the Constitution’s most innovative and unique feature. Alexander Hamilton later declared in the Federalist Papers that the independence of judges was “one of the most valuable of the modern improvements in the practice of government.... [I]n a republic it is a[n] ... excellent barrier to the encroachments and oppressions of the representative body.” [3] “[T]he independence of judges,” Hamilton continued, “may be an essential safeguard against the effects of occasional ill humors in the society” and against “injury of the private rights of particular classes of citizens, by unjust and partial laws.” [4] Hamilton also explained that the courts would be obliged to treat as void any statutes contrary to the Constitution, thereby laying the foundation of judicial review. [5] To the question of whether such a judiciary would become too powerful, Hamilton replied that the

judges themselves would be subject to the rule of law:

[A] voluminous code of laws is one of the inconveniences necessarily connected with the advantages of a free government. To avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules and precedents which serve to define and point out their duty in every particular case that comes before them [6]

Thus, judicial independence, as envisioned by Hamilton and other framers of the Constitution, was not a privilege to decide cases according to a judge's personal preferences. It was instead a solemnly conferred duty to decide cases impartially – that is, according to the law and the facts, to avoid an “arbitrary discretion,” and to abide by applicable “rules and precedents.” Judicial independence in this sense carried an obligation, echoed in today's codes of judicial conduct for Idaho's federal and state judges, to act “without fear or favor. Although judges should be independent, they must comply with the law....” [7] Indeed, the independence of judges is predicated upon impartiality and adherence to the rule of law. This is the anchor that holds firm our democratic republic, and enables our courts, in the memorable words of Justice Hugo Black, to “stand against any winds that blow....” [8]

Impartiality and Public Perception

For more than two centuries, the constitutional imperative of an impartial, independent judiciary has endured, although popular support for it has waxed and waned. After all, the concept is not intuitively grasped by the ordinary citizen who has heard since childhood that “in a democracy the majority rules.” Nor is the concept easily accepted by a citizen who views our courts as just another political branch of government, shaped by the same political forces and making the same political decisions that characterize the work of the other two branches.

Exploiting this perception, powerful political and economic interest groups throughout American history have sought to influence the selection of federal and state judges. Today, special interests overtly seek to populate the courts with judges vetted for their viewpoints rather

than for their capabilities. The acerbic partisanship of recent federal judicial appointments, coupled with the rising tide of money flowing into the judicial elections of many states, is disturbing evidence that we have entered a period of diminished public understanding of, and support for, judicial impartiality as a core value of our constitutional republic.

If this circumstance were only a passing phase in a long historical cycle, perhaps we could simply wait for the constitutional ship to right itself. But there are reasons to doubt that the problem will be self-correcting. Surveys show that many Americans today are ambivalent, even skeptical, about the concept of judicial impartiality. In one illustrative poll, conducted by Syracuse University's Campbell Public Affairs Institute, approximately 30% of respondents would not agree with a statement that judges should be shielded from outside pressure and allowed to make decisions on their own independent reading of the law. Even among the respondents who did agree with that statement, many did not believe our judicial system is actually fulfilling the promise of impartiality. Almost 87% of respondents said partisanship has at least some influence on judicial decisions, and 42% said it has "a lot" of influence; in another poll a similar 87% said that cash contributions to judicial campaigns, in states where judges are elected, had "some" or "a great deal" of influence upon judicial decisions. [9]

A 2021 survey of the public's civic literacy, conducted by the American Bar Association, has revealed a similar problem. In that survey, respondents were asked to agree or disagree with the following statement: "The nation's judicial system adheres to the rule of law, under which all individuals are treated equally in the eyes of the law." Just 56% agreed, 37% disagreed, and 6% expressed no opinion. [10] These responses may reflect a perception that judges are human and therefore imperfect; but the responses also demonstrate a characteristic noted by a commentator on the Syracuse survey: "Everyone wants to have a neutral and fair system of dispute resolution

and everyone also wants to make sure that his or her own side prevails.” [11]

Public opinion about the courts is shaped significantly by popular impressions of America’s most visible judicial body, the United States Supreme Court, even though the Court decides less than 100 cases per year, while the federal system as a whole handles roughly 400,000 cases and state courts handle an astonishing 100 million widely diverse matters annually. The Supreme Court occupies an extraordinarily important – but also an extraordinarily narrow – place in the American judiciary. Controversies about the Supreme Court should not be extrapolated to the administration of justice in trial and appellate courts across the nation.

Moreover, controversies about the Supreme Court often are not grounded in a well-informed understanding of the Court’s members or their work. A 2018 survey by C-SPAN showed that only 48% of American adults could name even one member of the Court. [12] Concededly, open-ended “name a Justice” questions are not the only way (and may not even be the best way) to gauge public understanding of the Court. [13] But the naming problem is symptomatic of a deeper lack of familiarity with the Court. Individuals unaware of the Court’s decision-making *process* – a process constrained by the Constitution and laws, and by what Hamilton called “strict rules and precedents” – tend to view the Court’s decisions in terms of *outcomes* and, particularly, on whether those outcomes accord with an individual’s personal or political preferences:

To the average person, the Supreme Court does a good job when it upholds laws the person likes, but a bad job when it strikes down those favored laws If the only thing that mattered about the Court were the result of its decisions, there would be little to separate its function from that of a legislative body. Yet Article III of the US Constitution ... calls for a Supreme Court – not a Supreme Congress.... Judging the Court based solely on [the outcome of] its decisions undermines this necessary distinction. The Supreme Court’s role is to interpret and apply the Constitution to the laws of the United States, not to determine whether policies are “good” or affirm a particular political ideology. [14]

The public's result-oriented perspective is exacerbated by the highly partisan process by which potential members of the Supreme Court have been nominated by Presidents and confirmed (or not) by the Senate in recent decades. As mentioned earlier in this essay, Senate confirmation hearings have become acerbic; indeed, they resemble political theatre with partisans on both sides appealing to their political bases by pressing nominees for express or implied commitments to outcomes on hot-button issues. Although the Senators' efforts in this regard are usually unsuccessful, the hyper-partisanship leaves a lasting impression on the viewing public. It is little wonder that in 2016 a Gallup Poll found that only 42% of respondents approved of the work done by the United States Supreme Court – a figure equal at that time to the Court's lowest approval rating in the 21st century. [15]

The impact of outcomes in particular cases was illustrated in 2022, when the Supreme Court decided the abortion case, *Dobbs v. Jackson Women's Health Organization*. [16] Before the decision was announced, an Associated Press-NORC Center for Public Affairs Research poll showed that 18% of respondents expressed a "great deal" of confidence in the Court, 54% said they had "some" confidence, and 27% said they had "hardly any." After the decision was announced, a poll showed 17% had a "great deal of confidence (about the same as before but apparently not for the same reasons), while those saying they had "some" confidence had shrunk to 39%, and those saying they had "hardly any confidence" had grown to 43%.

Partisanship in Supreme Court appointments has also adversely affected Congress itself. The hyper-partisan dynamic of Supreme Court appointments arguably has distracted Congress from its assigned constitutional role as the branch of government charged with debating policy and enacting laws. [17]

To be sure, some degree of partisanship should be expected in a process by which

members of the overtly political branches of the federal government – the legislative and executive – determine the composition of the least political branch, the federal judiciary. But extreme partisanship is not inevitable, nor has it always been the norm. Recall that two brilliant jurists with contrasting jurisprudential philosophies, the late Justices Antonin Scalia and Ruth Bader Ginsburg, were confirmed by the Senate with votes of 98-0 in 1986 and 96-3 in 1993, respectively.

Result-oriented and partisanship-tainted perceptions of the Supreme Court can carry over into public (mis)understanding of the judiciary in general. This is unfortunate because, as noted earlier, the overwhelming majority of cases are finally decided, not by members of the Supreme Court, but by trial and appellate judges elsewhere in the federal and state judiciaries. Indeed, a state's supreme court – not any federal court – is the final authority on interpretation and application of that state's constitution and laws, the only exception being when a case presents an issue that *also* implicates the national constitution or other federal law.

The judges of these federal and state courts are governed by judicial codes of conduct that underscore the importance of independence and impartiality. Judges in the federal trial courts and circuit courts of appeal are subject to the Code of Conduct for United States Judges [18], which is centered on five principles of judicial behavior:

- A judge should uphold the integrity and independence of the judiciary.
- A judge should avoid impropriety and the appearance of impropriety in all activities.
- A judge should perform the duties of the office fairly, impartially, and diligently.
- A judge may engage in extrajudicial activities that are consistent with the obligations of judicial office.
- A judge should refrain from political activity.

Similarly, the Idaho Code of Judicial Conduct, which is broadly consistent with the American Bar Association's Model Code of Judicial Conduct, contains the following statement in its preamble:

An independent and impartial judiciary is indispensable to our system of justice. The legal system in the State of Idaho is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society.

Both the federal code of conduct and the Idaho code emphasize the imperative of impartiality by providing that "a judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned" [19]

Few members of the general public have a full understanding of, or appreciation for, these codes. Yet the perceptions of the general public matter greatly to the health of America's distinctive republic. Theodore Roosevelt famously observed that the long-term durability of a republic depends upon the "average citizenship of the nation." [20] If today's "average citizen" does not accept, or does not understand, the importance of an impartial judiciary, the perceived legitimacy of American courts – and the respect accorded to the courts' judgments -- will (continue to) erode.

Social science literature shows, unsurprisingly, that the greater an individual's knowledge of the judicial system (whether acquired through formal education or actual experience such as jury service), the more favorable is that individual's opinion of the courts and of the judiciary's duty to decide cases impartially. [21] Most people, however, have limited experience with the courts, and their knowledge – to use a school report card phrase – is "in need of improvement."

Deficient understanding of the judicial function is widely regarded as part of a general civic literacy "crisis" in America. There is much distress over surveys, such as one cited several years ago by the U.S. House of Representatives, showing that more teenagers could name the

Three Stooges and three judges of the “American Idol” television program, than could identify the three branches of government. [22] The National Assessment of Educational Progress has reported that only about one-quarter of high school seniors – many of whom are old enough to vote – have scored at the proficiency level or better on recent national civics tests. [23]

A survey conducted by Xavier University’s Center for the Study of the American Dream revealed that more than one-third of native-born Americans would fail the basic civic literacy test taken by foreign-born persons seeking to become naturalized citizens of the United States. (In contrast, 97.5% of the immigrants reportedly pass the test. Of course, they have studied for it!) Notably, on questions relating to the Constitution and to legal and political structures of our constitutional republic, native-born Americans did especially poorly:

- 85% did not know the meaning of the “rule of law.”
- 82% could not name “two rights stated in the Declaration of Independence.”
- 77% could not identify even one power of the states under the Constitution.
- 75% could not answer correctly the question, “What does the judiciary branch do?”
- 62% could not identify “what happened at the Constitutional Convention.” [23]

This, regrettably, is the knowledge base of the “average citizen” in our constitutional republic.

Civic Education about the Judiciary and the Rule of Law

Lawyers and judges have work to do. Our profession has a responsibility to advance public understanding of the rule of law and of the unique role played by the judiciary. As former American Bar Association President Jerome Shestack has written, “The justice system is our trust and our ministry.... [W]e bear the brunt of public dissatisfaction with the justice system’s flaws and deficiencies....” To make that limping legal structure stride upright is the obligation of every lawyer.” [25]

Lawyers can contribute by educating their clients – and their communities on Law Day, Constitution Day, and other civic occasions – that judges (even elected state judges) should not be regarded as politicians in black robes, but rather as officers of the least political branch of government, charged with maintaining judicial independence, impartiality, and the rule of law. Judges themselves can contribute by adhering strictly to applicable codes of judicial conduct, by maintaining fairness in judicial proceedings, and by prominently articulating clear reasons in plain language for judicial decisions – thereby enabling the public to discern the rule-of-law dimension of the judicial decision-making process rather than simply reacting to outcomes. Every judicial decision that explains the linkage between an outcome and the rule of law is a valuable enhancement of the public’s civic education.

The Role of Educators

Teachers have work to do, too. Idaho has already taken some steps in this direction. Our state requires secondary school students to pass a civics test (or an authorized alternative), and to take five credits of civics instruction including government (two credits), U.S. history (two credits), and economics (one credit). [26] School districts have authority to augment these requirements, and some have done so. Such mandated instruction provides a foundation for civic literacy in general; however, it does not address in depth the “average citizen’s” deficit in understanding the unique role of the judiciary and the rule of law.

Civics teachers striving to meet this challenge are currently confronting another difficulty: a push-back in certain quarters against civics education that is perceived to be a form of political indoctrination. The push-back appears to be especially directed at so-called “action civics” – *i.e.*, programs that include experiential learning outside the classroom through service opportunities or community projects. [27] Whatever may be the merits of this political

controversy, it should not distract from teaching law-related civics with emphasis upon the rule of law and upon the role of the courts in maintaining the proper relationships among the three branches of government as well as protecting individual rights guaranteed by the Constitution.

To advance such law-related civic education, the Idaho federal courts, the Idaho state judiciary, the University of Idaho College of Law, and Attorneys for Civic Education (affiliated with the Idaho State Bar) have collaboratively conducted institutes for Idaho secondary schoolteachers in the summers of 2015 through 2024. Another institute is forthcoming in 2025. The teachers' institutes have featured presentations by federal and state judges and justices, lawyers, and academics, complemented by workshop-style discussions led by master teachers. The institutes are designed not only to enhance teacher expertise but also to help teachers craft lesson plans for use in their classrooms. The presentations and workshops illuminate the meaning of the rule of law; highlight the distinctive features of the United States Constitution, including the independent and impartial judiciary; illustrate a judge's role as guardian of the national and state constitutions; address the judge's dual tasks of interpreting and following the law; describe federal and state trial and appellate court processes; explain key elements in the processes of civil and criminal justice; explain the role of juries in the administration of justice; explore issues in media coverage of the courts; identify information resources available to teachers; and identify ways to enhance public understanding of the judiciary.

Initially, the teachers' institutes were held primarily at the Idaho Law & Justice Learning Center (ILJLC), a collaborative undertaking of the Idaho Supreme Court and the University of Idaho. More recently they have been held at the United States Courthouse, the Idaho Supreme Court, and the Boise branch location of the University of Idaho College of Law. The 2025 Institute will continue this pattern of collaboration.

The Role of the Media

As vitally important as formal education is, the most powerful “teacher” of lessons in civics is the mass media. News stories -- whether in print or electronic form – profoundly shape public perceptions of the justice system. Journalists have long shared in spirit the judiciary’s goals of independence and impartiality. Indeed, the vocabulary used to express these goals is remarkably similar. In 1896, Adolph S. Ochs, founder of the modern *New York Times*, published a declaration of principles including a commitment “to give the news impartially, without fear or favor, regardless of party, sect, or interests involved.” [29] Today, it is widely accepted that “[t]he basic responsibility of reporters covering governmental institutions is to inform the public of what officials are doing and about official policies and goals.” [30] Unfortunately, however, in reporting the work of the judicial branch, the media generally provide selective coverage of what “officials (*i.e.*, the judges) are doing” and sparse coverage about “official policies and goals (*i.e.*, the rule-of-law reasons for judicial decisions, rather than the bare outcomes). This problem manifests itself in numerous ways, a few of which will be briefly mentioned here.

First, news stories typically focus on high-profile or unusual cases, leaving the ordinary administration of justice largely unreported. This may be unavoidable. Journalism is a fast-paced business, focusing on the attention-grabbing events of each day. (Presumably, that is why the French term “jour” is rooted in “journalism.”) Accordingly, to take a simplistic example, the media do not report the safe landings of airplanes, but they do report air crashes. Consumers of such news reports are well aware that nearly all planes land safely, and that crashes are uncommon. But consumers of news about the courts in selected “newsworthy cases” are usually

not so familiar with the routine workings of justice. What they learn from the media about the justice system, in selected story after story, might be characterized as crash ... crash ... crash.

Second, public perception of the judiciary can be distorted if a high-profile case acquires a theme or “story line” that persists even in the face of nonconforming facts. An enduring, classic example is the trial in the infamous McDonald’s “hot coffee” case, *Liebeck v.*

McDonald’s. [31] Although the local (Albuquerque, New Mexico) newspaper provided generally factual coverage, the national media – especially the authors of running commentaries -- tended to characterize the case as the alchemy of a frivolous claim and a runaway jury. The evidentiary facts (third-degree burns, pelvic scarring, substantial hospital and medical costs, hundreds of prior complaints about the scalding temperature at which coffee was handed to drive-in window customers, and the judge’s reduction of the jury verdict) were under-reported in many national media accounts. To be sure, the case was not without genuine controversy. It could have provided a civics “teaching moment” about the distinction between compensatory and punitive damages; about the legal standards for making each type of award, as set forth in the court’s instructions to the jury; and about the scope of a judge’s authority in modifying a jury verdict. Each of these teaching points would have illustrated the operation of a system grounded in the rule of law. Instead, the impression conveyed to large segments of the public at the time of the trial was that damage awards in the civil justice system resemble a lottery.

Third, the focus of media reporting can be misplaced when, as often occurs in constitutional litigation, the court’s task is not to determine *who should prevail* in a controversy, but rather to determine *who should decide*. This task illustrates the judiciary’s role in maintaining the horizontal and vertical separation of powers as set forth in the Constitution. In the well-known “medical marijuana” case, *Gonzales v. Maich* [32], the United States Supreme

Court held, pursuant to the Commerce Clause and the Supremacy Clause of the Constitution, that federal laws governing marijuana as a controlled substance displaced a conflicting state statute (the California “Compassionate Use” Act). The Court was not tasked with deciding whether “medical marijuana” *ought to be* compassionately allowed. That was an issue for Congress to decide -- or would have been an issue for California, and any other state, to decide if Congress had not acted. Congress, however, had chosen to act. The case thus presented a “teaching moment” in federalism and the operation of the rule of law; instead, the Supreme Court was characterized in some media reports as simply being unsympathetic to the idea of compassionate use. [33]

Another example is the United States Supreme Court’s decision in the abortion case, *Dobbs v. Jackson Women’s Health Organization*, mentioned and cited above. In that case the Court held that the national Constitution does not expressly or impliedly preclude a state from restricting terminations of pregnancies. The Court was not called upon to say whether there *should* be any such restrictions or, *if* so, what form they should take. In the Court’s view, those were policy questions left to the states in our federal system. Media coverage and commentary on the decision, however, appeared to focus heavily on the Justices’ supposed personal views on the “right to choose” versus the “right to life.”

Notably, though, the *Dobbs* court *was* required to explain why it departed from the doctrine of *stare decisis* (adherence to precedent) in overruling two prior decisions – *Roe v. Wade*, and *Planned Parenthood v. Casey* [34] – in which a majority of the Court had articulated a constitutional limitation on the power of states to regulate abortions. Readers of the *Dobbs* majority, concurring, and dissenting opinions might disagree on whether the Justices’

explanations were persuasive, but at least the various opinions represented an endeavor to illuminate dynamic elements of the rule of law.)

Fourth, when a court is confronted with a case involving a sensitive public issue, some constituency or advocacy group may decry the decision as the work of an “activist” judge. This assertion ignores the fact that the judiciary is the one branch of government that usually cannot “decide not to decide.” In contrast to the legislative branch which has vast leeway to decide whether and when to address a public issue, and in contrast to the executive branch which possesses considerable discretion in promulgating and enforcing administrative regulations, the judiciary must take cases as they come and usually must render a public, written decision. [34] A judge may wish he or she had not been handed this task, and at least one of the litigants might wish he or she had not been forced to appear and argue in court; but the case must be decided.

Although activism may lurk in some judicial minds, the courts’ inability to “decide not to decide” provides a more cogent reason than “activism” as to why courts are occasionally thrust into sensitive public issues. In such cases, it is especially important that media reports refer to legal principle(s) identified in a judge’s decision. It is equally important that the judge carefully express those principle(s) in concise, clear language that journalists can use in news stories for lay audiences. Otherwise, the public may be forgiven for assuming that the judge reached out and took a case in order to achieve a personally favored outcome.

This problem is exacerbated by “result and reaction” reporting, a phenomenon mentioned previously in this essay. Such reporting describes the outcome of a case and -- rather than referring to the legal foundation of the court’s decision -- presents a narrative of conflicting reactions by the parties or other persons interested in the case. This type of reporting is consistent with a “story model” of journalism. Unfortunately, the narrative makes it appear that

a judge or appellate panel “favored” or “sided with” one litigant over another – indeed, such terms are often used in news stories and headlines.

Occasionally, the media must cover cases in which the courts are asked to decide whether certain legislative enactments or executive actions are valid under national or state constitutional provisions, or under other applicable laws. In such cases, if media reports simply say that judges have upheld or struck down pronouncements of other branches of government – without identifying law-based reasons expressed in the judicial decisions – the rule of law is obscured or ignored, and the public is left to assume that the judges are making decisions based upon personal or political preferences.

These issues in media coverage of the judiciary highlight the importance of law-related civic education focusing on the judiciary and the rule of law. The issues usually are not products of ill will by the media against the courts, or vice-versa; as noted, the media and the courts share a common heritage of devotion to independence and impartiality. Rather, the issues reflect structural and mission differences between these two venerable institutions, as well as time and resource constraints that not only hinder journalists from taking time to identify and note the operation of the rule of law, but also hinder judges, lawyers, and court staff from assisting reporters in this constitutionally vital task.

One promising response to these issues has been the emergence in Idaho of journalists’ institutes on covering the work of the courts with an emphasis upon the rule of law and the importance of an independent, impartial judiciary. The first such institutes, held in 2018 and 2019 at the Idaho Law & Justice Learning Center in Boise, were cosponsored by the Idaho Press Club, the Idaho state and federal courts, and the University of Idaho College of Law. The same cosponsors, joined by the Attorneys for Civic Education (affiliated with the Idaho State Bar),

have conducted additional institutes in subsequent years, and they are now considering another institute to be held in 2025 or 2026.

A Shared Commitment

Judges, lawyers, teachers, and journalists should continue to meld their talents and perspectives on law-related civic education. The great American innovation – an independent and impartial judiciary -- is being tested in our current, hyper-partisan times. Much is at stake. The “average citizen’s” understanding of the rule of law, and of the judiciary’s distinctive constitutional role, ultimately will determine whether our courts remain standing “against any winds that blow.”

This is how we keep our republic.

ENDNOTES

1. 11 AM. HIST. REV. 618 (1906); 3 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, App. A, at 85 (Max Farrand ed. 1937).
2. Indian tribes were recognized and addressed in the Commerce Clause, Article 1, Section 8.
3. *The Federalist No. 78*, compiled in THE FEDERALIST PAPERS (Clinton Rossiter, ed., 1961).
4. *Id.* at 469.
5. *Id.* at 465-466.
6. *Id.* at 470.
7. Commentary to Canon 1, *Code of Conduct for United States Judges*, and the *Idaho Code of Judicial Conduct*. (See notes 17-18 below.)
8. *Chambers v. Florida*, 309 U.S. 227, 241 (1940) (unanimous opinion authored by Justice Black).
9. Keith J. Bybee, *U.S. Public Perception of the Judiciary: Mixed Law and Politics*, JURIST ACADEMIC COMMENTARY (April 10, 2011), available online at <http://jurist.org/forum/2011/04/us-public-perception-of-the-judiciary-mixed-law-and-politics>; Brennan Center for Justice (October 29, 2013) available online at <https://www.brennancenter.org/our-work/analysis-opinion/new-poll-vast-majority-voters-fear-campaign-cash-skews-judges-decisions>.
10. https://americanbar.org/news/reporter_resources/civicknowledge-survey
11. Bybee, *see* n.9 above.
12. <https://newsweek.com/half-americans-can't-name-a-supreme-court-justice> (8/28/2018)
13. Heather McCabe & Sheila Kennedy, *Civic Identity, Civic Deficit: The Unanswered Questions*, JOURNAL OF CIVIC LITERACY, vol. 1, issue 1 (July, 2014), at 4.

14. Aidan Calvetti, *The “Supreme Congress”?* *Public Misunderstanding of the Judiciary*, BROWN POLITICAL REVIEW, <https://brownpoliticalreview.org/2016/05/supreme-congress-judiciary> (5/7/2016), at 2-3.
15. [U.S. Supreme Court Job Approval Rating Ties Record Low \(gallup.com\)](https://www.gallup.com), 7/29/2016.
16. 597 U.S. ____ (June 24, 2022).
17. See comments of Senator Ben Sasse at [User Clip: Sen. Sasse on the Misunderstanding of the Judiciary C-SPAN.org](https://www.userclip.com).
18. <https://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges> (effective, March, 2019). Justices of the United States Supreme Court are not subject to this code, although the Court recently has adopted a statement of ethical practices similar to many provisions of the code. Enforcement of these principles is lacking, however, partly because currently there is no mechanism to replace a Supreme Court Justice who is disqualified from a case. Consequently, disqualification can profoundly affect the outcomes of close, controversial cases. See, e.g., Scott Bomboy, “Why the Supreme Court Isn’t Compelled to Follow a Conduct Code,” *Constitution Daily* (National Constitution Center, July 15, 2016).
19. https://judicialcouncil.idaho.gov/Judicial_Conduct_Code_6-27-16.pdf
20. Theodore Roosevelt, “Citizenship in a Republic,” speech delivered at the Sorbonne, Paris, France, April 23, 1910, available online at <http://www.leadershipnow.com/tr-citizenship.html>.
21. James Gibson & Gregory Caldeira, *Knowing the Supreme Court? A Reconsideration of Public Ignorance of the High Court*, THE JOURNAL OF POLITICS, vol. 71, no. 2 (April, 2009), at 429-441. See also, e.g., Gregory Caldeira and Kevin McGuire, *What Americans Know about the Courts and Why It Matters*, INSTITUTIONS OF AMERICAN DEMOCRACY: THE JUDICIAL BRANCH 262 (Oxford University Press, 2005).
22. H. Res. 686, September 14, 2009 (calling for increased civic education in high schools). The resolution was adopted unanimously. The same resolution recited that only 46% of young adults passed a test of civic literacy and that persons over age 65 passed by the same percentage.
23. “Most Students Lack Civics Proficiency on NAEP,” *Education Week*, May 4, 2011 (updated March 24, 2012), available online at <http://www.edweek.org/ew/articles/2011/05/04/30naep.h30.html>.
24. News release, “Civic Illiteracy: A Threat to the American Dream,” Xavier University Center for the Study of the American Dream, April 26, 2012, available online at <http://xuamericandream.blogspot.com/2012/04/civic-illiteracy-threat-to-American.html>.
25. Jerome Shestack, “President’s Message: Defining Our Calling,” 83 *American Bar Association Journal* 8 (September, 1997).
26. Idaho Code section 33-1602(7); Idaho Administrative Procedure Act (IDAPA) 08.02.03 107.06. The civics test draws upon questions found in the United States Citizenship Naturalization Test. On civics testing generally, see Education Commission of the States, “State Notes: High School Graduation Requirements – Citizenship,” available online at <http://mb2.ecs.org/reports/Report.aspx?id=115>.
27. See, e.g., Stanley Kurtz, “The Greatest Education Battle of Our Lifetimes,” *National Review* (March 15, 2021), criticizing the “Civics Secures Democracy Act” introduced in Congress.
28. See “Civics Education Resource Guide,” National Center for State Courts, available online at <http://ncsc.org/Education-and-Careers;civics-education/Resource-Guide.aspx>
29. *New York Times* Archives, “Without Fear or Favor,” published August 19, 1996 (the 100th anniversary of Ochs’ declaration of principles), available online at <http://www.nytimes.com/1996/08/19/opinion/without-fear-or-favor.html>
30. Martha Kumar and Alex Jones, *Government and the Press: Issues and Trends*, AMERICAN INSTITUTIONS OF DEMOCRACY: THE PRESS 226, 231 (Oxford University Press, 2005). See also Gerald N. Rosenberg, *The Impact of Courts on American Life*, INSTITUTIONS OF DEMOCRACY: THE JUDICIAL BRANCH 280, 295-296 (Oxford University Press, 2005).

31. There is no reported appellate decision because the case was settled after a jury trial. A general description of the litigation and media coverage can be found at https://en.wikipedia.org/wiki/Liebeck_v._McDonald%27s_Restaurants.
32. 545 U.S. 1 (2005).
33. *E.g.*, “Court Snuffs Medicinal Pot,” headline story on Page 1 of the *Arizona Republic*, June 7, 2005.
34. *Roe v. Wade*, 410 U.S. 113 (1973); *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).
35. There are exceptions to the duty of a court to decide every case presented. Some cases involve issues that are neither ripe nor justiciable, or that involve parties who lack standing. These exceptions are narrow, however, and they provide the judiciary nothing resembling the wide exit ramps available to the other branches of government.