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The Judiciary Is Not Just Another Political Branch

by

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There has been a relentless campaign on the Left to politicize—and therefore delegitimize—the Supreme Court as an institution. Integral to this cause has been an effort to paint the Court as just another partisan branch of government, akin to the executive and legislative branches.

This campaign to politicize the Supreme Court is not only wrong-headed but dangerous. Dangerous because, to the extent it succeeds, it undermines the rule of law upon which our system of constitutional government rests. This is because the rule of law depends on the American people’s conviction that the Court, with “neither FORCE nor WILL, but merely judgment,” as Alexander Hamilton put it in [Federalist No. 78](#), “remains truly distinct from both the legislature and the executive.”

While survey data show that Americans have more confidence in the Supreme Court than in the other two branches, it’s also true that confidence has declined meaningfully in the last decade. In a [September 2024 Gallup survey](#) asking, “Do you approve or disapprove of the way the Supreme Court is handling its job?” 44% approved, 51% disapproved, and 5% had no opinion.

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More disturbingly, [according to Gallup](#), the Court's depressed approval ratings are driven largely by exceedingly low trust (24%) and job approval (15%) among Democrats. These low ratings have contributed to a near-record 57-point gap in the Supreme Court's overall job approval rating between Republicans and Democrats.

This should come as no surprise considering the Left's incessant attacks, including from the highest ranks of government. Recall Senate Majority Leader Chuck Schumer railing against what he called a ["MAGA Supreme Court"](#) after the Supreme Court's ruling in the landmark presidential immunity case. And President Joe Biden's declaring ["this is not a normal court"](#) after the Court's ruling ending affirmative action in college admissions. Of course, there has been much more in the same vein.

None of the above is news, of course. And to be sure, the Supreme Court as an institution, and its Justices, shouldn't be immune from criticism. It never has enjoyed such immunity in our nation's history.

But something is different now. Press stories, now more frequently than ever before, portray the Supreme Court as just another political branch, controlled by one party or the other. Here's one recent example. A [November 6 story](#) in *Forbes* suggests that, with Donald Trump's victory, the Supreme Court is likely to remain "firmly in *Republican* hands for years to come." Here's [another](#) recent one where *Vox* called out "this Supreme Court, with its 6-3 *Republican* supermajority."

I get that the Justices are appointed by Republican or Democrat presidents and confirmed by a Senate in which one party or the other holds a majority. But when the press characterizes the Court as being in "Republican hands" or having a "Republican supermajority," it fuels the notion that the Justices, once they don their robes, are expected to act on a party basis. This partisan gloss makes it more difficult to maintain the public's confidence in the work of the Court. It's one thing to characterize the Court, or individual Justices, as "conservative" or "liberal," "right" or "left," "originalist" or "purposivist," or whatever other jurisprudential or philosophical label may be thought appropriate. It's quite another to leap from the philosophical to the partisan.

Indeed, there are many empirical studies showing that there is much less partisanship among the Justices—measured by associating the votes of individual Justices with the party of the president that nominated them—than is often assumed. For example, in an October 2024 [article](#) in the *City Journal*, Ilya Shapiro, Supreme Court scholar and the Manhattan Institute's Director of Constitutional Studies, conducts a deep dive examining the Court's opinions from the last term. He points out that "[o]nly 11 of the 58 opinions in argued cases last term resulted in 'partisan' 6-3 splits and nearly half the decisions were unanimous." What's more, he demonstrates that, to the extent party identification matters, when the unanimous decisions are excluded, there was 81% alignment among Democrat appointees versus only 35% among Republican appointees.

All those who care about the rule of law, whether on the Left or the Right, should make a conscious effort to rebuff attempts to label the Supreme Court or its Justices on a partisan basis. This characterization delegitimizes the Court's work in the mind of the public.

And the press, singled out for special protection under the First Amendment, should know better—and do better. Rather than boosting the cause of politicizing the Court, a responsible press would help educate the public regarding the Court’s unique role in our constitutional system as an institution whose decisions are grounded in law, not politics.

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