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The Third Branch
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Our courts are strong! All Floridians can rest assured that the judges of Florida act in accordance with the clear language of our Florida Constitution. We, in Florida, are governed by three co-equal branches of government.

Article V of the Florida Constitution states that the Florida Supreme Court *shall* have exclusive jurisdiction to hear appeals on death penalty final rulings, to rule upon the validity of state statutes, to construe provisions of the Florida or U.S. Constitution, to compel or prohibit the actions of state officers, and to rule upon other matters.

Recent statements of a few require comment on behalf of all Floridians. Just as Floridians have placed confidence in our Executive Branch and Legislative Branch representatives by voting them into office, so too do citizens expect and depend on those within these branches of government to uphold their oaths and to abide by the terms of our Florida Constitution. In 1885, our Florida founders carefully crafted and enacted the Florida Constitution. It creates the courts of Florida and *requires* their independence.

Some in Tallahassee have recently commented about their judicial philosophy, stating that it is "abundantly clear" that courts profoundly affect our everyday lives and note that: 1) the increasing power of courts in our society should not come at the expense of institutions that *have a more legitimate claim to govern our lives*; 2) the courts have substituted their own personal views for the laws enacted by the people and their representatives . . . courts have *seized* control over policy decisions that are not theirs to make and do not adhere to the foundational principle of separation of powers; 3) there is a need for judges who are "*humble* about their judicial role . . . humble in the sense that they know courts are not mini-legislators or governors"; and 4) a healthy respect for the people's right of self government and a strong dose of humility are absolute prerequisites for a good judge.

The Evolution of Judicial Independence

Over 200 years separate the U.S. Constitution framers' understanding of judicial independence from ours. Intervening history has had an obvious impact on the course of the judiciary's institutional decisional independence. Decisional independence enables the judiciary to make impartial decisions and to keep the political branches in check. This relationship was put to an early test in the landmark case of *Marbury v. Madison*, decided in 1803. What made *Marbury* a landmark decision is that it was the first case in which the judiciary's power to review and void the acts of another branch of the federal government was asserted. The Court created precedent for its exercise of judicial review over

legislative enactments without alienating Congress.

The Brennan Center for Justice at New York University commented on judicial independence as follows:

Judicial independence is the freedom we give judges to act as principled decision makers. The independence is intended to allow judges to consider the facts and the law of each case with an open mind and unbiased judgment. When truly independent, judges are not influenced by personal interests or relationships, the identity or status of the parties to a case, or external economic or political pressures.

Why is judicial independence important? An action paper written by the Brennan Center answers this question cogently:

Judicial independence inspires respect for the courts, which is essential to the judiciary's power to hand down decisions that are sometimes politically unpopular. Deeply controversial decisions on abortion, prayer in school, and the death penalty are widely obeyed because the public perceives that the outcomes are not "rigged," but are the result of a process in which independent judges strive faithfully to apply the laws of the land to specific cases.

Judicial independence is important because Americans believe it to be a basic tenet of our democratic system. We believe that disputes can be resolved fairly and impartially in a court of law, that all who seek redress from a court will receive "equal justice under law." That belief helps foster respect for the institutions of democracy, as an aggrieved member of society can rest assured that transgressions against him or her will ultimately be set right.

The Spirit of the Laws (1748)

Charles de Secondat, Baron de Montesquieu (1689–1755), was an nobleman, a judge in a French court, and one of the most influential political thinkers of his time. Based on his research, he developed a number of political theories presented in *The Spirit of the Laws* (1748).

This treatise presented numerous theories; among the most important was respect for the role of history and climate in shaping a nation's political structure. It was for his views on the English Constitution that he is perhaps most renowned.

Montesquieu wrote of the importance of a balance of power and believed that there can be no liberty when the legislative and executive powers are united in the same person or body because of the temptation to act in a tyrannical manner. He further stated that there can be no liberty if the power of judging is not separated from the legislative and executive powers because of the temptation to act as an oppressor.

Recent events 90 miles from our shores, as well as events in Iraq, North Korea, and former European Eastern Block countries, demonstrate the folly of a court system that is subservient to a totalitarian regime. Our 225-year-old constitutional democratic experience has produced a vibrant judicial system that is the envy of all others.

Our constitutional framers envisioned the creation of a written document, the Florida Constitution, which not only created the judicial branch of government but anticipated a balance among three *equal* branches of government. This experiment has resulted in a

strong Florida judiciary that has a healthy relationship with the two other branches of government. All Floridians witness, on a routine basis, the health and vitality of our judicial branch of government.

Our judiciary, the third *equal* branch of government, is functioning well as a safeguard for all Floridians. For, as stated by Montesquieu in 1748: “[T]o prevent the abuse of power, ‘tis necessary that by the very disposition of things that power should be a check to power.”