

Chief justice says courts must be free to check ‘excesses’ of Congress, White House

As judges face attacks from President Donald Trump, Chief Justice John G. Roberts Jr. says government “doesn’t work if the judiciary is not independent.”

By Ann E. Marimow
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BUFFALO — Chief Justice John G. Roberts Jr. on Wednesday championed the independence and authority of the nation’s judicial system to serve as a check on Congress and the president at a time when federal courts are being attacked by the Trump administration.

The balance of power between the three, co-equal branches of government “doesn’t work if the judiciary is not independent,” Roberts said during a wide-ranging, lively interview. The job of judges, he added, “is obviously to decide cases, but — in the course of that — check the excesses of Congress or the executive, and that does require a degree of independence.”

His comments drew enthusiastic applause from the audience of lawyers and judges who were keenly aware that President Donald Trump’s second term has led to escalating tensions between executive branch officials pushing the boundaries of presidential power and federal trial court judges whose rulings often slow or scale back those efforts.

Asked about calls from Trump and his allies to impeach federal judges who have ruled against the administration, Roberts echoed a statement he issued in March, saying that “impeachment is not how you register disagreement with a decision.”

The chief justice’s appearance in a hotel ballroom in downtown Buffalo was a chance for him to return to his roots. He was born in the city in 1955 and visited his boyhood home Wednesday before participating in the commemoration of the 125th anniversary of the federal court for the Western District of New York.

Seated onstage in a leather armchair, Roberts talked for nearly an hour with his Harvard Law School friend, Judge Lawrence J. Vilaro, who hears cases in the Buffalo courthouse. They discussed Roberts's decision to become a lawyer, the fundamentals of excellent writing and the question of whether the chief justice would ever retire.

"I'm going out feet first," Roberts joked.

Unlike many of his colleagues and predecessors on the high court, Roberts — who has been chief justice for nearly 20 years — said he has no plans to write an autobiography.

"My life is very interesting to me; I'm not sure it's terribly interesting to anyone else," he said, drawing laughter from the audience.

Outside the venue, the tone was more serious. A small group of protesters greeted lawyers and judges attending the event with signs demanding that the Supreme Court defend due process and follow the Constitution.

"History is watching, Chief Justice Roberts. Defend Democracy," one prominent sign in the corner said.

Roberts had previously touched on threats to the independence of the nation's judicial system in late December, in his annual written report on the state of the federal courts. He denounced violence directed at judges for doing their job, writing that "attempts to intimidate judges for their rulings" are "inappropriate and should be vigorously opposed."

But that was before Trump returned to the White House and issued a slew of executive orders and other actions that have triggered more than 200 legal challenges.

Scores of judges have temporarily halted Trump's initiatives as the challenges make their way through the court process, at times saying the policies are likely unconstitutional or violate federal statutes and that allowing them to go forward while lawsuits are pending could cause significant harm.

The administration frequently has responded with defiance, non-answers and foot-dragging, with the president and his allies calling for the impeachment of judges who have ruled against the administration.

The chief justice's comments on Wednesday in response to Vilardo's question were the first time Roberts addressed the subject in person.

In an appearance before a different group of judges and lawyers last week in Puerto Rico, Justice Ketanji Brown Jackson also emphasized the importance of respecting the judiciary, forcefully condemning what she characterized as the relentless attacks, disregard and disparagement that judges around the country are facing on a daily basis.

"A society in which judges are routinely made to fear for their own safety or their own livelihood due to their decisions is one that has substantially departed from the norms of behavior that govern in a democratic system," Jackson said, according to a copy of her remarks posted on the Supreme Court's website.

The Supreme Court is scheduled to hold its final argument of the term on May 15, a special session added to consider Trump's request to roll back nationwide court orders blocking a ban on automatic U.S. citizenship for children born to undocumented immigrants and foreign visitors.

Other legal challenges to Trump initiatives could get a full hearing at the Supreme Court next term. But the justices have been responding to emergency requests from the administration in those cases — deciding whether to allow Trump's policies to take effect for now while the legal process continues.

The justices have sided with Trump in some emergency cases, such as when the conservative majority cleared the way on Tuesday for the president to bar transgender troops from the military.

The high court also has ruled against Trump, backing a judge's order to restart certain foreign aid funding. And the justices issued an extraordinary middle-of-the-night order that temporarily barred the administration from deporting dozens of detained migrants being held in Texas — an order that has made it more difficult for Trump to carry out a signature aspect of his mass deportation efforts.

On Wednesday, Roberts tried to counter what he suggested is a public misconception of deep personal divisions on a high court that often divides along ideological lines in significant rulings.

People following the news and reading the court's decisions "must think, 'Boy, those people really must hate each other,' " he said. "We don't."

“Even if you are on opposite sides more often than not,” he added, “the bonds of real affection and friendship and shared experience are very, very strong.”