

**[DISCUSSION DRAFT]**

115TH CONGRESS  
1ST SESSION

**H. RES.** \_\_\_\_\_

Expressing the Sense of the House of Representatives that an Independent  
Judiciary is Fundamental to American Democracy.

---

IN THE HOUSE OF REPRESENTATIVES

Mr. NADLER submitted the following resolution; which was referred to the  
Committee on \_\_\_\_\_

---

**RESOLUTION**

Expressing the Sense of the House of Representatives that  
an Independent Judiciary is Fundamental to American  
Democracy.

Whereas Article III of the United States Constitution estab-  
lishes the Federal judiciary as an independent and co-  
equal branch of government;

Whereas, in Federalist Number 78, Alexander Hamilton  
wrote that “The complete independence of the courts of  
justice is peculiarly essential in a limited Constitution”;

Whereas the Supreme Court has reaffirmed the principle of  
judicial independence for more than 200 years, beginning  
with the foundational case of *Marbury v. Madison*, in  
which Court ruled that “It is emphatically the province

and duty of the judicial department to say what the law is”;

Whereas the judiciary is the crown jewel of our constitutional system;

Whereas personal attacks on the character and integrity of a sitting Federal judge by a Federal official is contrary to longstanding tradition, and undermines the principle of judicial independence;

Whereas, in June of 2016, then-candidate Donald Trump impugned the motives of Judge Gonzalo Curiel, who presided over litigation related to Trump University, by declaring that Judge Curiel was a “total disgrace” who had “an absolute conflict” because of his Mexican heritage;

Whereas, on February 3, 2017, Judge James L. Robart, Federal District Judge for the Western District of Washington, placed a temporary stay on the Executive Order titled “Protecting the Nation from Foreign Terrorist Entry into the United States”;

Whereas, in response to Judge Robart’s Order, President Trump tweeted, “The opinion of this so-called judge, which essentially takes law-enforcement away from our country, is ridiculous and will be overturned!”;

Whereas several of President Trump’s subsequent tweets both attacked Judge Robart specifically, and the court system more generally, including:

(1) “What is our country coming to when a judge can halt a Homeland Security travel ban and anyone, even with bad intentions, can come into U.S.?”;

(2) “Because the ban was lifted by a judge, many very bad and dangerous people may be pouring into our country. A terrible decision.”;

(3) “The judge opens up our country to potential terrorists and others that do not have our best interests at heart. Bad people are very happy!”;

(4) “Just cannot believe a judge would put our country in such peril. If something happens blame him and court system. People pouring in. Bad!”; and

(5) “I have instructed Homeland Security to check people coming into our country VERY CAREFULLY. The courts are making the job very difficult!”

Whereas the White House Press Secretary, Sean Spicer, issued a statement referring to Judge Robart’s ruling as “outrageous” but reissued the statement ten minutes later without the word outrageous;

Whereas Linda Klein, President of the American Bar Association stated that “personal attacks on judges are attacks on our Constitution”;

Whereas public figures and scholars from across the ideological spectrum have raised concerns with President Trump’s comments;

Whereas Senate Majority Leader Mitch McConnell (R-KY) stated, “I think it is best not to single out judges for criticism”;

Whereas the former Acting Solicitor General under President Obama, Neil Katyal, tweeted, “‘So-called judge’? As the former top courtroom lawyer for the federal govt, I’ve never seen a president attack a sitting judge this way.”;

Whereas Senator Ben Sasse, (R-NE) noted, “We don’t have any so-called judges, we have real judges”;

Whereas Joe Scarborough argued, “When a president uses social media to question the legitimacy of a federal judge

following an inconvenient (and temporary) outcome, that is simply unacceptable.”;

Whereas Yale University professor, Bruce Ackerman, stated, “The president is assaulting the foundations of the separation of powers in condemning the judge for his decision in a tweet.”; and

Whereas University of Chicago Professor Eric Posner argued, “Mr. Trump’s attack on Judge Robart’s integrity could encourage executive branch officials to disregard other judicial orders, and will further inflame people’s distrust of border agents, whether they do or not”: Now, therefore, be it

1       *Resolved*, That it is the sense of the House of Rep-  
2       resentatives that—

3               (1) the Legislative, Executive, and Judicial  
4       Branches are co-equal, and each deserves the respect  
5       of the others;

6               (2) an independent judiciary is fundamental to  
7       the checks and balances embodied by the separation  
8       of powers, is essential to maintaining respect for the  
9       rule of law, and is critical to our constitutional de-  
10      mocracy;

11              (3) attacks against the judiciary, as an institu-  
12      tion, threaten to weaken public confidence in the  
13      courts as a fair and impartial arbiter of the law; and

14              (4) whether or not one agrees with the sub-  
15      stance of a particular judicial decision, it is inappro-  
16      priate for sitting presidents, or other government of-

1 officials, to engage in ad hominem attacks against a  
2 judge, or otherwise place political pressure designed  
3 to undermine the independence of that judge, or to  
4 erode trust in the entire court system.