

Troy: Judicial independence, the Rule of Law, and Justice Roush

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On the eve of the 2016 Virginia General Assembly session, our elected senators and delegates are faced with a decision critical to the independence, integrity and respect for the highest court in the Commonwealth. While the partisan bickering resulting from the Governor's appointment of Justice Jane Marum Roush to the Virginia Supreme Court has deteriorated into seemingly pure power politics, I fear this episode will do lasting damage to the public's confidence in our judiciary and respect for the rule of law.

Virginians are global leaders in educating on the importance of the rule of law through The Center for Teaching the Rule of Law at Roanoke College. As the Center's charter provides: The Rule of Law is the tie that binds citizens together as a nation of diverse people. It sustains a constitutional representative form of democracy, an equitable and accessible legal system, a free-market economy, and civil society.

None of this is possible without an independent judiciary that provides the critical check and balance against governmental overreaching and unjust laws.

Working through the World Justice Project and the National Council on Social Studies, the Center brings the rule of law to life around the world, training teachers and teaching students at all levels. If Virginia is to remain the standard bearer for preserving the rule of law through education of our



Jane Marum Roush, Terry McAuliffe, David B. Albo

Virginia Supreme Court appointee Jane Marum Roush (right) answers a question during her introductory news conference in Richmond as Del. Dave Albo, R-Fairfax (left) and Virginia Gov. Terry McAuliffe look on. The governor may have had Albo on board for her appointment, but he didn't have other Republicans — who now say they intend to replace Roush with another judge.

youth and tomorrow's leaders, we can ill afford to set the precedent of removing an outstanding jurist based not on any lack of ability but rather due to partisanship.

United States Supreme Court Justice Robert Jackson once famously stated that the Supreme Court of the United States was “. . . not final because we are infallible but [rather] we are infallible because we are final.” This truism also applies to the Supreme Court of Virginia. The rule of law requires citizens to accept the decisions of our highest courts as final even if they disagree with them. We accept these decisions because we have confidence that they are based not on politics or favoritism, but are rather based on the rule of law set out for all to follow and for the judicial branch to fairly apply.

It is unprecedented in modern Virginia history for pure politics to play the singular role in the removal of a judicial officer. Since 1901, every sitting justice appointed by the Governor of Virginia subsequently has been elected to the Supreme Court when the General Assembly reconvened – 31 gubernatorial appointments in a row.

Unfortunately, the leadership of the General Assembly has stated its intention to remove Justice Roush, even though she is highly qualified and respected, because a Governor of the other political party appointed her last summer.

Regardless of whether Governor McAuliffe should have consulted more with the General Assembly leadership before appointing Justice Roush, she should not now be ousted from the bench in order to punish the Governor. Although all agree that Justice Roush's appointment could have been handled better, all also agree that the process resulted in the appointment of an outstanding jurist to the Supreme Court of Virginia. In order to protect the independence and integrity of Virginia's judiciary, Justice Roush should be elected to a full 12-year term on the Supreme Court when the General Assembly convenes this month.

There are few higher callings than to preserve the independence and integrity of the judicial branch of government.

If undermined by baldly political considerations, the respect and adherence to the rule of law is degraded. We must move beyond the political fight over Justice Roush.

Partisan concerns must be set aside and Justice Roush must not be removed from the bench. The rule of law demands no less.