

NOMINATION PROCESS

The Constitution doesn't have what they might consider a job description for federal judges as it does for the president and members of Congress. Federal judges are appointed under Article III of the Constitution by the President of the United States with the advice and consent of the Senate. They are appointed for life, during good behavior, and can only be removed through the impeachment process. The process of appointing a federal judge can be controversial. While the Constitution does not set out formal qualifications for the job, members of Congress and the President may have strong and conflicting viewpoints on who should be appointed to the bench. In this lesson, students examine the key constitutional reference to judges. They look at the general biographical profile of federal judges to learn about their career paths. They then analyze one of several statements made during Supreme Court Justice Ruth Bader Ginsburg's nomination hearing.

About These Resources

- [Profiles of federal judges](#)
- [Justice Ginsburg statement](#) - Excerpts from Justice Ginsburg opening statement during her nomination hearing before the Senate Judiciary Committee.
- [Senate Judiciary Committee questionnaire](#) - Senators question judicial nominees using similar questions.
- [Discussion questions](#)

How to Use These Resources

1. Before students enter the classroom, write the following excerpt from the Constitution on the blackboard or overhead projector and cover it so that students cannot see it.

" . . . The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services a Compensation, which shall not be diminished during their Continuance in Office." —Article III, Section I, U.S. Constitution

2. At the beginning of class, ask students to brainstorm what kind of professional preparation they believe a judge should have for the job. Write their ideas on the blackboard or overhead projector.
3. Share some [profiles of federal judges](#). Ask students to read the profiles and compare the background of the federal judges with their own expectations of a qualified nominee. Ask them to identify information from the profiles that supports their ideas and information from the profiles that may differ from their ideas.
4. Reveal the excerpt from the U.S. Constitution on federal judges that you wrote before the beginning of class. Ask students what qualifications the Constitution stipulates. They should reply that there are no qualifications listed.
5. Explain to students that even though the Constitution does not specify a particular background or set of credentials for federal judges, the nomination and confirmation process assures that qualified people hold the job. Remind students that the President nominates judges to the federal courts and the Senate confirms them. Explain to students that they now will read an excerpt from the confirmation process to get a sense of the kind of background the President and the Senate look for in a qualified nominee.
6. Share [excerpts from Justice Ginsburg opening statement](#). Explain to students that this is an excerpt from Justice Ginsburg's opening statement before the Senate Judiciary Committee. As they read the excerpt, ask them to think about what the statement reveals about the criteria that are important to her and that she believes the Senators are looking for in a Supreme Court Justice.

7. Discuss the excerpt with students using the [discussion questions](#).

Homework or Alternative Assignments

- Role play the confirmation hearing process.
- Distribute the [Senate Judiciary Committee initial questionnaire](#).
Ask students to imagine that they are on the staff of a member of the Senate Judiciary Committee. They have been asked to research the answers to the questions that the current nominee will be asked. Direct them to fill out the questionnaire to the extent that they can by using media coverage.

JUSTICE GINSBURG STATEMENT

Read the excerpt from Justice Ginsburg's statement to the Judiciary Committee below. What does the statement reveal about the qualifications she believes the Senators are looking for in a Supreme Court Justice?

" . . . I am, as you know from my responses to your questionnaire, a Brooklynite, born and bred—a first-generation American on my father's side, barely second-generation on my mother's. Neither of my parents had the means to attend college, but both taught me to love learning, to care about people, and to work hard for whatever I wanted or believed in. Their parents had the foresight to leave the old country, when Jewish ancestry and faith meant exposure to pogroms and denigration of one's human worth. What has become of me could only happen in America. Like so many others, I owe so much to the entry this Nation afforded to people yearning to breathe free."

" . . . [I]n my lifetime, I expect to see three, four, perhaps even more women on the High Court Bench, women not shaped from the same mold, but of different complexions. Yes, there are miles in front, but what a distance we have traveled from the day President Thomas Jefferson told his Secretary of State: "The appointment of women to [public] office is an innovation for which the public is not prepared. Nor," Jefferson added, "am I."

"The increasingly full use of the talent of all this nation's people holds large promise for the future, but we could not have come to this point – and I surely would not be in this room today—without the determined efforts of men and women who kept dreams of equal citizenship alive in days when few would listen. People like Susan B. Anthony, Elizabeth Cady Stanton, and Harriet Tubman come to mind. I stand on the shoulders of those brave people.

"Supreme Court Justices are guardians of the great charter that has served as our nation's fundamental instrument of government for over 200 years, the oldest written constitution still in force in the world. But the Justices do not guard constitutional rights alone. Courts share that profound responsibility with the Congress, the President, the States, and the People. Constant realization of a more perfect union, the Constitution's aspiration, requires the widest, broadest, deepest participation on matters of government and government policy.

" . . . Some of you asked me, during recent visits, why I want to be on the Supreme Court. It is an opportunity, beyond any other, for one of my training to serve society. The controversies that come to the Supreme Court, as the last judicial resort, touch and concern the health and well-being of our nation and its people; they affect the preservation of liberty to ourselves and our posterity. Serving on this Court is the highest honor, the most awesome trust that can be placed in a judge. It means working at my craft—working with and for the law—as a way to keep our society both ordered and free.

"Let me try to state in a nutshell how I view the work of judging. My approach, I believe, is neither "liberal" nor "conservative." Rather, it is rooted in the place of the judiciary of judges—in our democratic society. The Constitution's preamble speaks first of We, the People, and then of their elected representatives. The Judiciary is third in line, and it is placed apart from the political fray so that its members can judge fairly, impartially, in accordance with the law and without fear about the animosity of any pressure group.

"In Alexander Hamilton's words: the mission of judges is 'to secure a steady, upright, and impartial administration of the laws.' I would add that the judge should carry out that function without fanfare, but with due care: she should decide the case before her without reaching out to cover cases not yet seen. She should be ever mindful, as Judge and then Justice Benjamin Nathan Cardozo said: 'Justice is not to be taken by storm. She is to be wooed by slow advances.' "

" . . . Federal judges may long outlast the President who appoints them. They may serve as long as they can do the job, as the Constitution says, they may remain in office "during good Behavior." Supreme Court Justices, particularly, participate in shaping a lasting body of constitutional decisions; they continuously confront matters on which the framers left many things unsaid, unsettled, or uncertain. For that reason, when the Senate considers a Supreme Court nomination, the Senators are properly concerned about the nominee's capacity to serve the nation, not just for the here and now, but over the long term.

You have been supplied, in the five weeks since the President announced my nomination, with hundreds of pages about me, and thousands of pages I have penned – my writings as a law teacher, mainly about procedure; ten years of briefs filed when I was a courtroom advocate of the equal stature of men and women before the law; numerous speeches and articles on that same theme; thirteen years of opinions—well over 700 of the decisions I made as a member of the U.S. Court of Appeals for the District of Columbia Circuit; several comments on the

roles of judges and lawyers in our legal system. That body of material...is the most tangible, reliable indicator of my attitude, outlook, approach, and style. I hope you will judge my qualifications principally on that written record spanning thirty-four years"

". . . You are well aware that I came to this proceeding to be judged as a judge, not as an advocate. Because I am and hope to continue to be a judge, it would be wrong for me to say or preview in this legislative chamber how I would cast my vote on questions the Supreme Court may be called upon to decide. Were I to rehearse here what I would say and how I would reason on such questions, I would act injudiciously."

". . . A judge sworn to decide impartially can offer no forecasts, no hints, for that would show not only disregard for the specifics of the particular case, it would display disdain for the entire judicial process."

". . . It is fitting, as I conclude this opening statement, to express my deep respect for, and abiding appreciation to Justice Byron R. White for his thirty-one years and more of fine service on the Supreme Court . . . He expressed a hope shared by all lower court judges; he hoped "the [Supreme] Court's mandates will be clear [and] crisp...leav[ing] as little room as possible for disagreement about their meaning." If confirmed, I will take the counsel to heart and strive to write opinions that both 'get it right' and 'keep it tight.' "

Excerpted from "Nomination of Ruth Bader Ginsburg, to be Associate Justice of the Supreme Court of the United States," Hearings before the Committee on the Judiciary, United States Senate, 103rd Congress, U.S. Government Printing Office, 1994, pp. 53-56.

SENATE JUDICIARY QUESTIONNAIRE

Read through the following questions that are similar to those Justice Ginsburg was asked to respond to in writing before her nomination hearing.

Based on your research, collect related information that gives insight into a current nominee's background.

I. Biographical Information

1. Education: List each college and law school you have attended, including dates of attendance, degrees received and dates degrees were granted.
2. Employment record: List (by year) all governmental agencies, businesses or professional corporations, companies, firms, or other enterprises, partnerships, institutions, and organizations, nonprofit or otherwise, with which you are or have been connected as an officer, director, partner, proprietor, or employee.
3. Writings and Speeches: (a) List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited. Please supply one copy of all published material to the Committee.
4. Citations: Please provide: (a) Citations for all opinions you have written (including concurrences and dissents).

II. Financial Data and Conflict of Interest (Public)

1. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including any salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items of \$500 or more.
2. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.
3. The American Bar Association's commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that . . . discriminates on the basis of race, sex, or religion. Please list all business clubs, social clubs or fraternal organizations to which you belong or have belonged since graduating from law school
4. Has anyone involved in the process of selecting you as a judicial nominee (including, but not limited to a member of the White House staff, the Justice Department, or the Senate or its staff) discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any . . . assurances concerning your position on such case, issue, or question? If so, please explain fully.
5. Please discuss your views on the role of the judiciary in our governmental system and the . . . criticism involving "judicial activism."

DISCUSSION QUESTIONS

For Justice Ginsburg's statement:

1. Why do you suppose Justice Ginsburg spends time near the beginning of her statement discussing this country's pursuit of "equal citizenship?"
2. How does Justice Ginsburg view the work of judges?
3. What information in her background does Justice Ginsburg assume the Senators will be interested in analyzing? What might these aspects of her background reveal about her fitness for being a Justice on the Supreme Court?
4. What kinds of questions does Justice Ginsburg say she will refuse to answer during the nomination hearing? Why?

Alternative Activities or Discussions

- Role play the confirmation hearing process.
- Using the Senate Judiciary Committee Initial Questionnaire ask students to imagine that they are on the staff of a member of the Senate Judiciary Committee. They have been asked to research the answers to the questions that the current nominee will be asked. Direct them to fill out the questionnaire to the extent that they can by using media coverage.