

The Judicial Nominations Process



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About the Nomination

Senators from the state where the judicial vacancy is located often have a selection process (e.g. commission, committee, staff) that help them identify good candidates.

Senators then make recommendations to the White House and negotiations on the nomination are made.

Review of potential nominees' records and background information is done by the White House Counsel & Department of Justice.

Then the President publicly makes the nomination

What Can You Do?

- Evaluate and ask your Senators and the President (or candidates) what they evaluate and what they will prioritize when selecting federal judges.
- Make recommendations to Senators, President, and other decision-makers (e.g. commission members) what they should consider and prioritize.
- Encourage great people to consider applying for a federal judgeship!
- Write Op-Eds, LTEs, social media posts about what your expectations are and your recommendations.

The Judicial Nominations Process

Judicial
Vacancy
Announced

STEP 1:
President
Nominates

STEP 2:
Senate
Judiciary
Committee
Evaluates

STEP 3:
Senate
Judiciary
Committee
Reports

STEP 4:
Senate
Confirmation
Vote

STEP 2:
Senate
Judiciary
Committee
Evaluates

About the Committee Evaluation

Senators on the Senate Judiciary Committee and their staff review the materials and records of nominees.

Nominees complete a Questionnaire that can be found on the Senate Judiciary Cmte's Website.

Once a **blue slip** is submitted (pictured) that says the home-state Senator "approves" of the nomination, the Committee Chair will schedule a hearing for the nominee. This is currently honored only for district court nominees. Blue Slips are not required for circuit court nominees.

UNITED STATES SENATE
Committee on the Judiciary
October 5, 2011
Dear Senator Menendez:
Please give me your opinion concerning the following nomination now pending before the Senate Judiciary Committee:
Patty Shwartz, of New Jersey, to be United States Circuit Judge for the Third Circuit
Please return this form as soon as possible to the Committee office in District 286.
Sincerely,
Patrick Leahy
Patrick LEAHY
Chairman
Hand Delivered to 503-528
REPLY
TO: Senator Leahy, Chairman
 I approve
 I oppose
Comments:
Patrick Leahy
United States Senator

The nominee testifies under oath at the hearing and answers questions from Senators in 5 minute rounds.

Senators can ask additional questions in writing (known as **Questions for the Record or QFRs**) for the nominee to answer. That are usually due one week after the hearing. Click [here](#) to see what QFRs look like.

Senator Dick Durbin
Written Questions for Badalamenti
February 19, 2020
For questions with subparts, please answer each subpart separately.
Questions for John Badalamenti
1. When do you believe it is appropriate for the Supreme Court to overrule one of its precedents?
This is a matter for the consideration and purview of the Supreme Court. All inferior courts are bound to fully and faithfully apply all Supreme Court precedent, unless and until the Court has overruled it. See *Hicks v. Miranda*, 422 U.S. 332, 344-45 (1975).
2. Should district court judges ever write opinions—whether majority opinions, concurrences, or dissents—calling for the Supreme Court to review and consider reversing its own precedents? Or is improper for lower court judges to opine on what the Supreme Court should do?
Unless sitting by designation on a court of appeals or on a specially constituted three-judge panel of the district court, district judges do not author concurring or dissenting opinions. A district judge is required to fully and faithfully apply all Supreme Court precedent, and any order or opinion must be written in a manner consistent with that duty.

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STEP 2A: Senate Judiciary Committee Evaluates

What Can You Do?

- Do research on the nominee. You can learn a lot about a nominee by reading their questionnaire. Click [here](#) to see what a Questionnaire looks like. Read other organization's research and opposition letters. The Alliance for Justice often writes a report on nominees broken down by issue. Click [here](#) for an example.
- Talk with Senate Judiciary Committee staff about concerns.
- Send in letters of concerns, opposition, or support regarding a nomination (note: this is lobbying). Senate Judiciary Staff prefer individual letters wherever possible. Many organizations have an email list they use to send letters to Judiciary staff.
- Send questions to Senate Judiciary to ask in the hearing. Note: staff like to have questions on the Friday before the week of the hearing. Senators only have five minutes to ask questions and more complicated questions might be best posed in QFRs. .
- Send recommended QFRs to committee staff. Staff like to have these on the Friday before the week they are due.
- Watch the hearing! They are available to watch online at judiciary.senate.gov.
- Write Op-Eds, LTEs, social media posts about what your expectations are and your recommendations.

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About the Committee Reporting Process

STEP 3: Senate Judiciary Committee Reports

After the hearing, the Judiciary Committee hold a “Executive Business Meeting,” also known as a “Mark Up.” Nominees are usually “held over” for one week following their hearing (meaning the committee won’t vote on them until the next Mark-up).

Senators on Committee then take a vote on whether to report out of Committee the nominations so the full Senate can vote on the nomination.

The Committee can vote to move them favorably, unfavorably, or without recommendation.

What Can You Do?

- You can still talk to your Senators about concerns you have about the nominee. Urge them to attend the Mark Up and to discuss the nominee.
- There’s still time to send in letters of concerns, opposition, or support regarding a nomination (note: this is lobbying).
- Make calls of concern, opposition, or support of a nomination (note: this is lobbying).
- Watch the mark up! They are available to watch online at judiciary.senate.gov.
- Write Op-Eds, LTEs, social media posts.

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About the Full Senate Vote

STEP 4: Senate Confirmation Vote

- Senate Majority leader “files cloture” (a motion to proceed) on a nominee on a specific date.
- Cloture vote is taken (on whether to proceed with debate).
- Debate: Senators debate through floor speeches for two hours for district court nominees, and 30 hours for circuit court nominees.
- A final vote is taken.

What Can You Do?

- You can still talk to your Senators about concerns you have about the nominee.
- There’s still time to send in letters of concerns, opposition, or support regarding a nomination (note: this is lobbying).
- Before: Make calls of concern, opposition, or support of a nomination (note: this is lobbying). After: Make calls to thank or condemn the Senator’s vote.
- Issue a Press Statement.
- Watch the Senate floor on [cspan.org](https://www.cspan.org)!
- Remember! After the vote you can tell the story and talk to colleagues, friends, family, neighbors about what happened and the impact!

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Resources

Resources:

Senate Judiciary Committee Website: <https://www.judiciary.senate.gov/>

Congressional Review Service Reports:
<https://crsreports.congress.gov/>

American Bar Association (ABA) Ratings:
https://www.americanbar.org/groups/committees/federal_judiciary/ratings/

U.S. Courts
<https://www.uscourts.gov/>

Federal Judicial Center:
<https://www.fjc.gov/research/reports-and-studies>

Congressional Record:
<https://www.congress.gov/congressional-record/browse-by-date>

The Leadership Conference: [civilrights.org](https://www.civilrights.org)

AFJ: <https://www.afj.org/our-work/judicial-nominations/>

PFAW's Confirmed Judges, Confirmed Fears Reports:
[confirmedfears.org](https://www.confirmedfears.org)