

LESSON PLAN: Advice and Consent - The Senate Considers the President's Supreme Court Nominations

Student Handout

Candidate Questions:

Background: As a new Supreme Court justice is being considered by the Senate Judiciary Committee it will be important to know where that person stands on fundamental Constitutional questions that might reflect how they would rule on controversial cases. This is true for both the president as well as members of both parties in the Senate. All nominees are carefully scrutinized for their legal competency and intellectual ability. However, it is also important to know their constitutional philosophy and if they have any strong ideology or political beliefs that might be extreme in one way or the other.

Senators of the Judicial Committee will be questioning the new Supreme Court nominee in hearings conducted over several weeks. They will be asking the candidate about their views on Constitutional issues surrounding upcoming cases in next year's Supreme Court session. It would be unfair for senators to ask a candidate how they might rule on a particular case without being able to view all the circumstances involved. Indeed, many past candidates have refused to answer such questions stating that judges are sworn to impartiality and thus can offer no forecasts or hints on cases yet to be heard and that to do so would show contempt for the entire judicial process.

Below are some of the cases the Supreme Court will be hearing this next session. Review these and discuss the questions that follow. Then proceed on to the next activity.

Abortion:

Ayotte v. Planned Parenthood

At question is whether a state law could ban abortions for minors unless parents have been notified. The only exceptions would be to prevent death or if a judge rules that the minor is mature enough to make the decision.

A Supreme Court ruling could either strengthen abortion rights or allow states to pass more restrictive parental-notification requirements.

Physician-assisted suicide:

Gonzales v. Oregon

This case won't directly rule on the Constitutionality of physician-assisted suicide, but on a circuit court's previous ruling that prevented the Justice Department from restricting doctors' use of federally controlled drugs to help terminally ill patients commit suicide.

If the Court agrees with the federal government that it has the authority to restrict doctors' use of the drugs, it would nullify the state's Death with Dignity Act because the federal government would make it unlawful for doctors to use such drugs for those purposes.

Gay Rights: Rumsfeld v. FAIR

Congress originally passed the Solomon Amendment in response to the policies of many university law schools, which barred recruiters for employers who practiced discrimination. The restrictions applied to military recruiters as well because of the military's ban on openly gay soldiers.

A Supreme Court ruling on the constitutionality of the law will determine if the government can compel colleges who receive federal funding to grant access to military recruiters.

Discussion Questions:

1. Identify the individual rights at question in each of the upcoming cases.
2. Identify the possible restriction on these rights and why you believe these restrictions are being imposed.
3. How might a conservative or liberal candidate rule on these cases?

Developing Questions for the Supreme Court Nominee

In this next activity, you will take on the role of a Congressional staff person of one of the senators on the Judicial Committee. Working as a committee, develop 5 questions to ask the nominee on these upcoming cases or other topics you feel important. Follow the guidelines below in developing your questions.

BACKGROUND: The Senate Judiciary Committee will conduct hearings on the new Supreme Court nominee. In addition to questions about the nominee's legal competency and intellectual ability, the members of the committee would like to also know how the nominee feels about the social and political issues connected to some high profile cases coming before the Supreme Court next session. It is important to remember that it would be not only improper, but also pointless to directly ask a candidate on how they might rule on an upcoming case without them hearing all the details of the arguments of both sides. Not only would it be unethical for a judge to state how they would rule in such a situation, but history has shown that many a justice who was thought to be of one or another political leaning, turned out to be either the opposite or that over the course of their tenure on the Court had evolved to see issues from different sides.

GUIDELINES:

In your committee review the issues surrounding the three upcoming cases to be heard by the Supreme Court. Look at the examples below of proper and improper questions for a nominee. You can see that the proper questions ask for general beliefs or knowledge where as the improper questions ask how a candidate would rule on a specific case. Then develop five questions for the Senate Judiciary Committee to ask the nominee.

PROPER QUESTIONS

- What constitutional evidence would you need to over-rule a long standing Supreme Court decision?
- Do you believe the Constitution encompasses a right to privacy?
- Should the Constitution be a flexible document whose interpretation changes with the times?

IMPROPER QUESTIONS

- Do you expect to over-rule Roe v. Wade if you are confirmed?
- What are your views on the military's policy toward gays?
- Do you believe that the Death with Dignity Law is constitutional?