IndependentWomen'sVoice®

Judicial Qualifications in 60 Seconds

What's at Stake:

Progressives want judges to decide cases based on modern notions of fairness and social justice, rather than on the law as written. But it is not the job of a federal judge to establish public policy priorities or to create new rights and remedies. Those jobs belong to the political branches of government, which are accountable to the people.

Because progressives view the courts as "super-legislatures", rather than neutral arbiters of law, they oppose nominees to the federal bench who do not have an explicit record of support for their favorite causes and who are not willing to legislate particular policy outcomes from the bench. A system in which a judge can decide any case however he or she sees fit—where the outcome of the case depends not on the law but on the judge assigned to the case—puts everyone's freedom at risk.

Judicial Qualifications

The most important qualifications for nominees to the federal bench are:

1. Legal experience and credentials

Nominees to the federal bench should have distinguished themselves professionally as lawyers or legal academics. Because every litigant has the right to representation, nominees should not be judged by their clients or on the basis of legal arguments they made on behalf of clients.

2. A commitment to the principle of judicial restraint

Judges must interpret the law as written in the U.S. Constitution or in statutes passed by Congress and must restrain themselves from bending the law to achieve certain objectives. So long as a nominee is committed to this principle of restraint, his or her personal policy views are irrelevant.

3. Judicial philosophy

A demonstrated commitment to originalism and textualism provides important evidence that a nominee will practice judicial restraint, rather than impose his or her morals or worldview from the bench.

Addressing Misperceptions:

MISPERCEPTIONS	RESPONSES
Judges should expand social and political rights.	The will of the people is best expressed through the legislature. As Alexander Hamilton wrote, courts may not "substitute their own pleasure to the constitutional intentions of the legislature." (Federalist 78)
A judge that strikes down a law is a "judicial activist."	The U.S. Constitution is the supreme law of the land, so even democratically enacted laws can be struck down if they conflict with the Constitution. A judge that strikes down an unconstitutional law is exercising the power of "judicial review." This is not the same thing as "judicial activism," which occurs when a judge substitutes his or her own preferences for the will of the people.
"Originalism" is code for turning back the clock on civil rights.	Originalism has no political motive. Sometimes an originalist interpretation leads to a politically "liberal" result, sometimes it leads to a politically "conservative" result. By tethering judicial decision-making to the intent of the Framers, originalism provides a neutral interpretive device that keeps judges in their constitutionally prescribed lanes.