Independent Women's LAW CENTER

Judicial Philosophy

In 60 Seconds

What's at Stake

Progressives want the Supreme Court to decide cases based on modern notions of fairness and social justice, rather than on the law as written. Because progressives view the Court as a super-legislature, rather than as a neutral arbiter of law, they seek nominees to the Court whom they believe are willing to legislate certain outcomes from the bench.

It is not the job of the Court to set public policy or to create new rights and remedies. Those jobs belong to the political branches of government, which are accountable to the people.

Nor is it the job of the Court to rubber-stamp popular laws that conflict with the Constitution. An unelected justice who is unwilling to enforce the limits of our governing charter puts all of our freedoms at risk.

It is, therefore, critically important that any nominee to the Supreme Court understand the proper role of the judiciary in our democracy.

Qualifications for a Supreme Court Justice

Supreme Court nominees should, of course, possess strong academic and legal credentials. But resumes are only part of the equation. From a diverse pool of many qualified candidates, the president should nominate and the Senate should confirm only those candidates who possess **a sound judicial philosophy**.

Nominees to the Supreme Court must demonstrate a commitment to:

- enforcing the Constitution as written and
- applying statutes passed by Congress consistent with their original public meaning,

even when doing so leads to outcomes with which they personally disagree.

A justice who fails to anchor her decisions to constitutional or statutory text is legally adrift, guided only by politics and her own personal morals and worldview.

Addressing Misperceptions

MISPERCEPTIONS	FACTS
Courts 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).
When the Court strikes down a law, it is engaging in "judicial activism."	When the Court strikes down a law that conflicts with the Constitution, it is engaged in the time-honored practice of "judicial review." This is *not* the same thing as "judicial activism," which occurs when a judge substitutes her own preferences for the law as written.
Originalism and Textualism are "conservative philosophies."	Originalism and textualism have no political motive. Sometimes these interpretive methods lead to politically "liberal" results, sometimes they lead to politically "conservative" results. By tethering judicial decision-making to the text and its original meaning, originalism and textualism help keep justices impartial.