



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
Joel W. Solomon United States Courthouse
900 Georgia Avenue
Chattanooga, Tennessee 37402

A JUDICIAL CONFIRMATION PRIMER

The nomination of federal appellate judge Ketanji Brown Jackson to the Supreme Court is one of the top national stories being covered in the media today. With this nomination receiving so much media coverage, it is an excellent time for a primer on the nomination and confirmation process. The same basic process applies to all Article III federal judges, whether for the trial-level district courts, the circuit courts of appeals, or the Supreme Court. The process also demonstrates one of the ways in which the three different branches of our federal government serve as checks and balances on each other.

A Vacancy Occurs.

The confirmation process requires, first of all, a vacancy. Vacancies can occur because of a sitting judge's retirement, impeachment, or death—or for lower courts, the sitting judge's elevation to a higher court. President Joe Biden nominated Judge Jackson to fill an anticipated vacancy on the Supreme Court created by Justice Stephen Breyer's announcement that he will retire at the end of the current Supreme Court term. If Judge Jackson is confirmed to the Supreme Court, that will in turn create a vacancy in her current seat on the Court of Appeals for the District of Columbia Circuit. It is common for the nomination process to begin upon announcement of an upcoming vacancy.

The President Receives Recommendations.

The Constitution gives the President the sole power to appoint justices and judges to federal courts, but only with the advice and consent of the United States Senate: “[The President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . , Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for” U.S. Const. art. II, § 2. When a vacancy occurs or is announced, the President receives recommendations from a wide variety of people. Recommendations from Senators carry the most weight, as do recommendations from members of the President's own political party.

The President Narrows the Candidates to a Manageable List.

The President relies on key staff members in his or her administration to manage this early part of the process. These staff members conduct informal investigations on the various candidates' backgrounds, gathering information on the candidates' integrity, intellectual capacity, judicial

temperament, and health. The staff also check for embarrassing information on candidates that might hinder confirmation or bring discredit on the administration's judgment. Based on these informal investigations, what started as a long list of candidates is narrowed to a manageable few. Key at this phase is the strength of support from Senators and important members of the President's party.

The Top Candidates are Subjected to More Searching Investigations and Interviews.

With a shorter list of candidates, more comprehensive investigations follow. First, each candidate is asked to fill out an exhaustive questionnaire on his or her professional experience, personal background, and financial condition. The FBI, the IRS, and the American Bar Association then conduct searching investigations on each candidate. The investigations are so thorough that even a candidate's kindergarten teacher might receive a visit. After the investigations, the President interviews the top candidates for the Supreme Court personally, and may interview candidates for lower court positions personally, as well.

The President Submits the Name of His or Her Selection to the U.S. Senate.

Once the President settles on a nominee, the person's name is submitted to the United States Senate, where the nomination is referred to the Senate Judiciary Committee. The nominee completes another exhaustive questionnaire for the Judiciary Committee, and the committee's staff conducts yet another investigation. The nomination is then scheduled for a public hearing at which the nominee is expected to answer questions from Senators. For a Supreme Court nominee, all of the committee Senators attend and ask questions. For lower court nominees, generally not all committee Senators are present.

Judicial Committee Refers the Nomination to the Full Senate for a Vote.

At the conclusion of the hearing, the Judiciary Committee votes on whether to recommend confirmation to the full Senate. If a majority of the committee members vote in favor, or in some instances where the committee is evenly split, the nomination goes to the full Senate. The full Senate does not take evidence or conduct a hearing. It does allow the Senators to argue their positions for or against the nomination. Limitations may be placed on how long Senators can argue. When it comes time for a vote, the positive votes of a majority of the one hundred Senators are necessary for confirmation.

President Signs Commission.

If the Senate votes in favor of confirmation, it sends the President a formal notice of its action. The President then signs a commission designating the candidate a federal judge. Once the commission is delivered to the candidate, he or she can take the oath of office, becoming a federal judge. Article III of the Constitution provides that "[t]he Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour" U.S. Const. art. III, § 1. The newly confirmed judge thus continues to serve until his or her resignation, death, or impeachment begins the process once again.

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