

Hear it From the Judge

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How to Pick a Supreme Court Justice

President Barack Obama recently named U.S. Circuit Judge Sonia Sotomayor as his nominee to replace retiring Justice David Souter. This creates good timing to consider how we select our United States Supreme Court Justices and review the Constitutional source for such selection process.

Our U.S. Supreme Court is the highest judicial branch of our federal government. The Supreme Court consists of nine Justices, one of which serves as the Chief Justice. Our current Chief Justice is John Roberts who was appointed by President George W. Bush in 2005.

The Supreme Court is established by Article III of the U.S. Constitution which states as follows: “The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour ...”

Thus, the Supreme Court is the only Court directly created by the Constitution. The United States Circuit Courts of Appeal and the District Courts are all created by Congress. Further, Supreme Court Justices, and all federal Judges of the lower Federal Courts, are appointed for life. This is different from Judges in Minnesota who are typically appointed by the Governor and are subject to reelection every six years.

The U.S. Constitution, at Article II, provides that the President nominates a Judge and the Senate provides “Advice and Consent” to such an appointment. This particular provision is described by many Constitutional Law and history experts as a compromise between those Founders who desired a strong Executive Branch versus those concerned about an authoritarian President.

In recent history, the practice of the Senate has been to hold hearings of the Judiciary Committee in which the Supreme Court nominee is asked questions by Senators. Minnesota Senator Amy Klobuchar is a member of this Committee. This part of the process is relatively new in our Country’s history. The first Supreme Court nominee to come before the Judiciary Committee was Harlan Fiske Stone who was nominated by President Calvin Coolidge in 1925 and was later approved by the Senate.

Following the Judiciary Committee recommendation, the full Senate will consider a formal mo-

tion to “Advice and Consent” the nominee. A majority of Senators is sufficient to pass this motion and support the nomination. However, if less than three-fifths of Senators provide support, a filibuster is possible to block such a nomination.

The formal constitutional right to name a Supreme Court Justice is with the President. However, the President must obtain the formal approval of the Senate for the nomination to become effective.

We all have an opportunity to watch the Senate Judiciary Committee proceedings involving the nomination of Circuit Judge Sonia Sotomayor. These proceedings may begin this summer. I encourage you to take this opportunity to learn about this critical part of our form of constitutional government.