



## **Judicial Nominations Educational Materials**

### **Adult-Ed Program on Judicial Nominations**

**60 minutes**

#### **Goals:**

- To expose participants to the nine Justices of the Supreme Court
- To give participants a basic understanding of the Federal Bench's structure and role
- To show participants how they can have an impact on the judicial nominations process
- To elucidate the connection between Judaism and judicial nominations

#### **Materials:**

Each participant should have a piece of paper and a writing utensil.

Each person should have a copy of the text study (Attachment I) and the URJ Resolutions on Judicial Nominations (Attachment II).

On a piece of butcher paper or a white board, write the steps in the judicial nominations process (listed below).

#### **Timeline:**

|           |                                                  |
|-----------|--------------------------------------------------|
| 0:00-0:10 | Set Induction and Introduction (Quiz)            |
| 0:10-0:15 | Background Information                           |
| 0:15-0:30 | Text Study                                       |
| 0:30-0:45 | The Supreme Court's Impact on our Lives          |
| 0:45-1:00 | How can you Have an Impact on the Federal Bench? |

#### **Procedure:**

##### **0:00-0:10 Set Induction and Introduction (Quiz)**

1. Facilitator should ask participants each of the following questions, in succession, asking the participants to write their answers on a piece of paper. Participants should answer individually.

Who is the President of the United States? (answer: Barack Obama)

Who are your Senators? Who is your Representative? (answer: varies)

Who are the 9 Justices on the Supreme Court? (answer: John Roberts, Antonin Scalia, Clarence Thomas, Samuel Alito, Anthony Kennedy, Sonia Sotomayor, Stephen Breyer, Ruth Bader Ginsburg, John Paul Stevens)

2. Facilitator should lead a discussion about the activity

#### **Discussion Questions:**

How many people feel confident that you answered the first question correctly? Second question? Third question? (facilitator should provide the answers after asking this question)

Which part of this activity was most difficult?

Do you think the difficulty is unique to the people in this room?  
Why are we so unfamiliar with Supreme Court Justices and the Judicial Branch of the United States Government?

Key points to cover during this discussion:

- The American public does not feel particularly connected to or affected by the Courts; the majority of Americans can't name the 9 Justices of the Supreme Court and don't have a solid understanding of how the Judicial Branch works
- Why are we so unfamiliar with the Judicial Branch?
  - We don't vote for judges directly
  - We don't think we can influence judges/Justices decisions, so we focus our attention elsewhere
  - The Supreme Court is talked about as a unit and we don't hear as much about individual Justices
  - Justices and judges do not often make public appearances or statements outside of their official capacities
  - We underestimate the impact that the Courts have on our lives

### **0:10-0:15      Background Information**

Quick Overview- What is the Federal Bench?

Information to cover:

- There are three branches of the United States government- Executive, Legislative, Judicial
- There are 94 district courts, 13 appellate courts, and one Supreme Court
  - Cases begin in the district courts and then they can be appealed to the Appellate Courts (also known as the Circuit Courts). Cases heard in the Appellate Courts can be appealed to the Supreme Court.
  - Thousands of cases are heard in the Federal courts every year, but only about 75-100 cases are granted cert to be heard at the Supreme Court level. Therefore, district and appellate courts are the courts of last resort for the vast majority of cases.
- The President nominates Federal judges, who are appointed "by and with the Advice and Consent of the Senate"
- All judges and Justices serve lifetime appointments(they serve on the bench until they die, retire, or are convicted on impeachment)

### **0:15-0:30      Text Study (Attachment I)**

Text study can be done as a large group or in pairs.

**Key points to cover:**

Discussion Question 1:

- The first text reminds us that pitying the poor is equally as repugnant as taking bribes from the rich. It reminds us that judges must be truly impartial and not favor the interest of one party over another no matter the circumstances.

#### Discussion Question 2:

- We need to not only behave justly personally but also build a just system of justice and a fair and impartial legal system so that all people will be treated justly. We can do this by fighting against judicial nominees that we oppose and supporting those who share our values .

#### Discussion Question 3:

- Many of the values that we would look for in judges today are the same as those that Jethro lists when advising Moses —we still search for capable, trustworthy men who spurn ill-gotten gain. These days, we would not consider fearing God to be an essential criterion for being put on the bench. In fact, we would object to someone being nominated for the bench simply based on his or her faith.
- These criteria can help us decide whether we want to support or oppose a nominee to the federal bench
- The system of justice that Moses creates resembles our own as it has multiple “levels” of courts

#### Discussion Question 4:

- The Jewish people were among the first to establish a code of laws to guide the behavior of the people
- When the Supreme Court issues a decision, the majority and minority positions are all preserved—this resembles a page of Talmud

### **0:30-0:45     The Supreme Court’s Impact on Our Lives**

1. Pose the question to the group: Does the Supreme Court have a real impact on our lives? What are some examples of court cases you know of that have real-life implications?

2. Ask participants to discuss the following cases: What are some real-life impact of the following court cases?

#### *Ledbetter v. Goodyear*

- Lily Ledbetter sued Goodyear Tires after finding out that for many years she had been paid less than her male counterparts
- The Supreme Court ruled that law suits related to pay discrimination can only be filed within 180 days of the first discriminatory act (the first paycheck)

#### *Lawrence v. Texas*

- Declared unconstitutional a Texas law that prohibited consensual, private sexual acts between same-sex partners
- Re-affirmed the right to privacy regardless of sexual orientation

#### *Gonzales v. Carhart*

- Upheld the constitutionality of a law that banned a certain “late-term” abortion procedure
- This is the first decision related to reproductive rights that DOES NOT include an exception when a woman’s health is at risk

URJ Press Release: “When medical decisions are taken out of the hands of women and their doctors, an injustice has been done. Women are capable of making sound medical and moral decisions without government interference.”

### **0:45-0:60      How Can You Have an Impact on the Federal Bench?**

1. URJ Resolution (Attachment II)
  - a. Ask participants to take a few minutes to read through the resolutions, focusing on the “therefore” sections
  - b. Discuss. What are the criteria that the URJ uses to decide whether to oppose nominees? Support nominees?
2. At which points in the confirmation process can we get involved and take action?

The process for replacing a judge (write on a white board or piece of butcher paper or print out the Religious Action Center’s “Process and Impact Flyer” at [rac.org/judnoms](http://rac.org/judnoms)):

- Judge/Justice retires, dies, or is convicted on impeachment
- President announces a nominee
- Nominee referred to the Senate Judiciary Committee
- Nominee completes a comprehensive questionnaire about his/her personal history and approach to the law
- Senate Judiciary Committee holds a hearing on the nominee
- Judiciary Committee meets to decide whether they will report a “favorable recommendation,” “unfavorable recommendation,” or “no recommendation”
- Senate debates about the nominee
- Senators vote on whether to confirm nominee
- Judge/Justice takes his or her seat on the Bench

Key discussion points:

- First and foremost, stay informed about judges who retire and those that are nominated in to fill the vacancies
- Use the resources that become available to get a sense of the nominee’s record/statements (recommended sources: Religious Action Center, Alliance for Justice, People for the American Way, Leadership Conference on Civil Rights)
- Contact the Senate Judiciary Committee to express your opinions about a judge or encourage members of the Committee to vote a certain way
- Contact your state’s Senators to encourage them to vote for or against a judge
- Consider the Courts when you vote (the President and Senate decide who becomes a Federal judge; YOU vote for your Senators and the President)

## **Attachment I**

### **Jewish Texts**

“You shall not render an unfair decision; do not favor the poor or show deference to the rich; judge your kinsman fairly” (Leviticus 19:15)

“You shall not judge unfairly: you shall show no partiality; you shall not take bribes, for bribes blind the eyes of the discerning and upset the plea of the just. Justice, justice, shall you pursue” (Deuteronomy 16:19-20)

Jethro instructs Moses, “You shall also seek out from among all the people capable men who fear God, trustworthy men who spurn ill-gotten gain . . . let them judge the people at all times. Have them bring every major dispute to you, but let them decide every minor dispute themselves.” (Exodus 18:21-22)

#### **Discussion questions:**

In the second text, we learn that a judge should not take bribes. The first text goes a step further, stating that a judge should not “favor the poor or show deference to the rich.” What is the difference between these two statements?

The pursuit of justice is something that we all engage in and that our community values very highly. We talk about behaving justly all the time, but are we doing everything we can to ensure a just world?

Jethro provides advice to Moses about how to pick judges from among the people. Is this advice that we would follow today (do certain parts seem applicable or is all of it applicable)? How can we apply it to our work on Judicial Nominations? How does the system of justice that Moses establishes reflect our own?

How else does the Court system resemble/reflect Jewish teachings/values?

## **Attachment II URJ Resolutions**

### **Judicial, Executive Branch, And Independent Agency Nominations**

**Union of American Hebrew Congregations Board  
December 2002**

#### **BACKGROUND**

Jewish tradition teaches the necessity of fair, just and impartial courts. In Exodus 18:21, for example, Moses' father-in-law, Jethro, advises him to choose capable, trustworthy, and law abiding members of society as judges. Elsewhere we are taught of the ethical obligation to oppose unjust persons and unfair judgments; judges should neither "favor the poor or show deference to the rich." (Leviticus 19:15)

These values are also a cornerstone of American democracy. The preservation of the rule of law rests on the independence and fairness of our courts. Judges at all levels must be committed to defending the Constitution, protecting civil rights and civil liberties, acting within the framework of the precedents set by higher courts, and enforcing Constitutional legislation enacted by Congress when cases come before them. Legitimate concern about judicial vacancies and the burdens they impose on an overworked judiciary should not lead us to retreat from insisting that individual nominees meet the highest standards.

In addition to the Supreme Court's well known and crucial role in our nation's governance, federal courts at all levels play an increasingly critical role in safeguarding our fundamental freedoms. As the country has grown, and as the number of issues under federal jurisdiction has multiplied, federal court caseloads have burgeoned. At the same time, the Supreme Court has significantly reduced the number of cases that it considers by granting writs of certiorari. This means that even novel precedents set by each of the Federal Courts of Appeals may never be reviewed by the Supreme Court or may not be reviewed for a considerable period of time even when there are conflicts between circuits or significant issues on which a Supreme Court ruling is needed. Those precedent-setting decisions and interpretations by the appellate courts govern all lower court cases in their respective circuits and are effectively final decisions until and unless overturned by the Supreme Court.

Since the landmark ruling in *Brown v. Board of Education*, advocacy groups on both the right and the left have increasingly come to understand the policy-making role of the courts. While in the past, the pattern was to appoint judges across a fairly wide political spectrum, some recent administrations have intensified efforts to shape the philosophical balance of the courts by appointing as judges individuals who subscribe to a particular view concerning the Constitution and controversial policy issues. As a result, the philosophical and ideological diversity of the bench has been diminished, and a singular perspective dominates in a majority of the thirteen Courts of Appeals. Moreover, the next Supreme Court appointment could tip the balance of an

evenly divided court on issues of the most fundamental concern to the Reform Jewish Movement, American Jewry, and our nation.

Unlike other Presidential appointees, federal judges serve for life; their service often extends far beyond the term of the President who appoints them. Public input on judicial nominations is part of the democratic process envisioned by the founders. The Constitution makes judicial appointment subject to the Senate's "advice and consent."

Presidential appointments were never envisioned to be automatic. Appointment and confirmation are political decisions in which the voice of the people should be heard and weighed. As a democratic institution, the Senate needs to hear from the public before exercising its Constitutional power. This is implicit in the Senate's own rules, which provide for committee hearings on each nominee; it is expected and desirable that interest and advocacy groups make their views known. As Reform Jews, we believe there are cases where it is essential that our unique voice be heard in the debate over the future of our judiciary.

**Executive Branch Nominations** Although a President is entitled to significantly greater discretion in selecting Executive Branch nominees who reflect the Administration's views and philosophy, some similar considerations apply with respect to confirmation of nominees to these positions. Such appointees serve at the will of the President, and her/his key roles are to provide advice to, and implement decisions of, the President. The President should have wide leeway in appointing people to carry out the President's policies and reflect the Administration's viewpoints. Nonetheless, many of these appointments also shape public policy we care deeply about, and may determine the approach of an entire agency of government. Expressing views on confirmation permits us a role in decisions that determine vital policy matters. In the past, the UAHC has, on rare occasions, spoken out against executive branch appointments, particularly where proposed appointees have been associated with extremist groups.

**Independent Agency Nominations** Appointees to independent agencies are charged with carrying out policies enacted by Congress, often during different administrations, have terms in office that often extend beyond the term of the President who appoints them, and are usually removable from office only for cause. As a consequence, the views of Congress and of the public relating to how agency policies are to be carried out must also be considered. In the unusual case where a nominee has a demonstrated record of opposition to the policies that he or she would be responsible to administer, or of opposition to protection of fundamental rights that our Movement supports, it may be necessary for us to oppose confirmation of the nominee in order to protect our Movement's fundamental values and rights. While fewer instances may be expected in which the UAHC would express an opinion, the same process would be followed as in cases where expressing an opinion on a judicial nomination is recommended.

It is not the intention of this resolution that opposition to nominees or appointments becomes a regular occurrence. Opposition will be appropriate only where consideration of the factors listed in paragraph 2, below leads to the conclusion that core values and/or issues of concern to our Movement will be significantly jeopardized or adversely affected. Even then, appropriate restraint should be exercised so that opposition is limited to matters of significant import.

**THEREFORE**, the Union of American Hebrew Congregations resolves to:

1. Bring to the attention of the Senate of the United States, without opposing or supporting nominees, issues affecting moral policy concerns as articulated in UAHC resolutions on which the nominees' views or record need to be clarified before consent is given. (The process followed by the UAHC in such actions will be the same as that followed in determining the UAHC's position on legislative issues.)

2. Oppose a nominee if after consideration of what the nominee has said and written, and his or her record, it believes that a compelling case can be made that the appointment would threaten protection of the most fundamental rights which our Movement supports (including, but not limited to, the separation of church and state, protection of civil rights and civil liberties, women's reproductive freedom, Israel's security, and protection of the environment). Among the considerations that should be weighed in making this determination are whether:

- A. The nominee lacks the competence, professional qualifications, or ethical standards to serve in the position to which he or she is nominated;
- B. A nominee for a judicial position has demonstrated a pattern of disregard for generally accepted principles of jurisprudence or a nominee for an executive branch or independent agency appointment has a demonstrated record of opposition to the policies that he or she would be responsible to administer;
- C. The nominee has a record of bigoted, racist or anti-Semitic activity;
- D. The nominee has emerged as a major and influential ideologue on one or more issues of core concern to the Reform Movement and the appointment would likely contribute significantly to reshaping American jurisprudence or policy in a direction that would jeopardize those core values;
- E. The nomination has engendered a national debate on one or more issues of core concern to the Reform Movement so that the outcome of the confirmation or nomination is likely to be perceived as a referendum on that issue and will have significant implications beyond the individual nomination;
- F. The nominee's confirmation would shift the ideological or policy balance of a particular court or independent agency on matters of core concern to the Reform Movement;

3. Use the following process to decide whether to oppose confirmation of a Presidential nominee:

- A. If time permits, recommendations to oppose a nominee will be taken to the UAHC Board or its Executive Committee for decision.
- B. If time does not permit, recommendations to oppose a nominee will be submitted to a review committee, which will include, in accordance with the UAHC board resolution of June 1974, all members of the CSA Executive Committee who serve on the UAHC Board and such other members as the Chair of the UAHC may choose. The review committee is to make a recommendation to the Chair and President of the UAHC who will decide the matter.
- C. The above process refers to UAHC policy making. As always, the CCAR will follow its own procedures and the Commission will work with both bodies.

- D. Ask the UAHC Executive Committee to review how this process has worked in practice at its February 2004 meeting or thereafter.

## **Support for Judicial, Executive Branch, and Independent Agency Nominations**

**Union for Reform Judaism  
December 2008**

### **BACKGROUND**

In the 2002 Resolution on Judicial, Executive Branch, and Independent Agency Nominations, the Union for Reform Judaism affirmed its commitment to a fair and impartial judiciary by resolving to oppose nominees “if after consideration of what the nominees have said and written and their records, it believes that a compelling case can be made that their appointments would threaten the protection of the most fundamental rights which our Movement supports (including but not limited to the separation of church and state, protection of civil rights and liberties, women’s reproductive freedom, and protection of the environment).” In further expression of our commitment to these values, there are certain circumstances under which we may choose to support a nominee.

Nonetheless, as with the 2002 resolution, “It is not the intention of this resolution that [support of] nominees or appointments becomes a regular occurrence.” Restraint should be exercised so that support is limited to matters of “significant import.”

Therefore, the Union for Reform Judaism **RESOLVES** that, in the same highly selective manner that has governed its implementation of the 2002 resolution, it may support otherwise qualified nominees who, during the confirmation process, are subject to attack or criticism based on:

- A. Their records or stated views related to the protection of the fundamental rights that our Movement supports, and/or
- B. Aspects of their personal identities that are irrelevant to their ability to fulfill the responsibilities of the positions to which they are nominated (including but not limited to sexual orientation, gender, race, disability, ethnicity, or religion).