

U.S. Judicial Nominations

One major concern when comparing the presidential candidates should be their method of selecting judicial nominees, whether for the U.S. Supreme Court or any of the lower courts. The Supreme Court is still closely divided on controversial issues, such as the Partial-Birth Abortion Ban and *Roe v. Wade*. Also, in the lower courts, judges will rule on state legislation that pertains to abortion and end of life situations; most of these decisions will never be seen by the Supreme Court. According to Stuart Taylor of *The National Journal*, "Apart from the Supreme Court, the next president will fill a steady stream of vacancies—and perhaps a batch of newly created seats—on the federal District and Appeals courts. The cumulative impact of those choices may well be more important than any one Supreme Court appointment, although far less visible."



Below is a comparison of our two presidential hopefuls based on Stuart Taylor's article from *The National Journal*:

Barack Obama

Partial-Birth Abortion

Obama: Obama described the ban as a dramatic departure from precedents protecting a woman's right to choose. He warned that "conservative Supreme Court justices will look for other opportunities to erode *Roe v. Wade*."

President Bush's Supreme Court Nominees

Obama: Obama voted against both Chief Justice John Roberts and Justice Samuel Alito during their Senate confirmation hearings. He claims that the Court too often sides with "the powerful against the powerless" and lacks "empathy" for ordinary people.

How to Select Judicial Nominees

Obama: Obama has said that while "most of the time" conservative and liberal Supreme Court justices will arrive at "the same place," what "matters at the Supreme Court is those 5% of cases that are truly difficult. In those cases, adherence to precedent and rules of construction will only get you through 25 miles of the marathon. That last mile can only be determined on the basis of one's deepest values, one's core concerns, one's broader perspectives on how the world works and the depth and breadth of one's empathy."

John McCain



McCain: McCain praised the decision: "I'm very happy about the decision, given my position on abortion. Partial birth is one of the most odious aspects of abortion."

McCain: McCain has identified Bush-appointed Chief Justice John Roberts and Justice Samuel Alito as ideal models.

McCain: McCain called judicial appointments "one of the defining issues of this presidential election." Taylor said that "McCain [in a May 6, 2008, speech] echoed decades of conservative complaints about 'an elite group of activist judges' who 'make law instead of apply it' and violate 'the clear intentions of the Framers' by issuing 'rulings and opinions... on policy questions that should be decided democratically [and] show little regard for the authority of the president, the Congress, and the states, [or] the will of the people.'"

Experience teaches that abortion—and the *Roe v. Wade* decision in particular—will be the main issue on which the Senate will focus while reviewing Supreme Court nominees. Pro-abortion organizations and liberal politicians will yet again pontificate that *Roe v. Wade* will be overturned. Important to note, however, is that, even if *Roe v. Wade* were overturned, abortion would not be banned. The pro-abortion Center for Reproductive Rights explained, "A Supreme Court decision overturning *Roe v. Wade* would not by itself make abortion illegal in the United States. Instead, a reversal would remove federal constitutional protection for a woman's right to choose and give the states the power to set abortion policy."

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Nomination Process

Supreme Court justices are appointed to that bench position for life. The procedure for appointing a justice is provided for by the Constitution (Article II, Section 2, clause 2), stating that the president "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint... Judges of the Supreme Court." The President and the Senate share that power. Also, although not mentioned in the Constitution, an important role is played by the Senate Judiciary Committee before the candidate is questioned by the full Senate.

Hence, the President of the United States first nominates a candidate for the position of Supreme Court Justice. Once the president releases the name of his nominee, the Senate holds hearings. Until the 20th century, these hearings were held behind closed doors. However, since 1930, the confirmation hearings have been completely open to the public. Since 1981, the hearings have even been televised. After the hearings, the full Senate will then vote either to confirm or reject the candidate. The majority of Supreme Court nominees are approved by the Senate; only 12 out of 148 candidates have ever been rejected.

Among the starkest contrasts between John McCain and Barack Obama is the dramatic difference in their promised approaches to judicial appointments, especially to the closely divided Supreme Court."

—Stuart Taylor, *National Journal*, July 26

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