

## JUDICIAL NOMINATIONS PROGRAM GUIDE

### I. Introduction

ACS encourages its chapters to plan programming in the fall of 2010 and beyond on issues relating to judicial selection, nomination, and confirmation. The composition of the federal bench greatly impacts all substantive areas of the law. Judges interpret statutes, oversee regulations, and develop the common law. The process of appointing judges has become increasingly contentious in recent decades. This trend has been exacerbated in the current Congress, leading to persistently high vacancy rates and lengthy delays in the consideration of nominees. ACS encourages our chapters to host events that can illuminate a variety of issues surrounding this important topic. Some events can explore issues related to the nomination and confirmation process itself. Others can examine how the composition of the federal bench makes a real difference in areas of the law as diverse as employment, voting, the environment, and congressional power.

### II. Program Ideas Related to the Nomination and Confirmation Process

The judicial nomination and confirmation process encompasses a number of important issues that could support programming either on their own or in combination.

#### ***The selection of judicial nominees***

- How are nominees for the federal bench selected? How much influence do home-state Senators exert over nominations? How do Senatorial nominating commissions work? What factors should influence the selection of a nominee?
- For more information on this subject, see the “How the Confirmation Process Works” section of [www.judicialnominations.org](http://www.judicialnominations.org); the ACS event *Judicial Nominations in the First Year of the Obama Administration*, [video](#) of which is available online; and *Options for Federal Judicial Screening Committees*, a [report](#) by Russell Wheeler.

#### ***Impediments to confirmation***

- How do various procedural obstacles, including the blue slip, anonymous holds, and the filibuster, operate to prevent the prompt confirmation of judges? Why is the pace of judicial confirmation so slow? Does obstruction occur because of substantive disagreement with the merits of a nomination or for other reasons?
- For more information on this subject, see the “How the Confirmation Process Works” and “Recommended Readings” sections of [www.judicialnominations.org](http://www.judicialnominations.org); the ACS event *Judicial Nominations in the First Year of the Obama Administration*, [video](#) of which is available online; the ACS event *The Filibuster and the Pace of Judicial Confirmations*, [video](#) of which is available online; and *Falling Off a Cliff*, a [memo](#) prepared by the Center for American Progress.

### ***Diversity considerations and the federal bench***

- How diverse is the federal bench? To what extent is diversity of race, ethnicity, gender, and sexual orientation relevant to the selection of judges? To what extent should diversity of background and experience factor into the selection of judges? How does judicial diversity affect the delivery of justice in federal courts?
- For more information on this subject, see the ACS Panel Discussion *Diversifying Our Courts*, [video](#) of which is available online; and Justice at Stake's [Diversity Resources](#) webpage.

### ***How to become a judge***

- What steps can a lawyer take in preparation for becoming a judge? How do judges feel about the judicial nomination and confirmation process, and what advice can sitting judges give? How can lawyers position themselves for consideration for judgeships? What are the differences between state and federal judicial selection processes?
- For more information on this subject, see *Options for Federal Judicial Screening Committees*, a [report](#) by Russell Wheeler; many local bar associations also can provide further information.

### ***How to become a clerk***

- What steps can a law student take in preparation for becoming a law clerk? What do judges look for in hiring clerks? What are the benefits of a clerkship? How do current and former clerks feel about their experiences?

## **III. Program Ideas Related to the Importance of Judges**

Judges are critically important for the enforcement and implementation of laws in a wide variety of issue areas. The following subjects, along with many others, can yield rich opportunities for programming.

### ***The General Direction of the Courts***

- How has the federal judiciary changed in recent decades? How has substantive law changed in a variety of issue areas? What is the future trajectory of the courts? What is the proper role of a judge?
- For more information on this subject, see Senator Al Franken's address at the ACS National Convention, [video](#) of which is available online; *Judicial Hostility to Litigation and How it Impairs Legal Accountability for Corporations and Other Defendants*, an ACS [Issue Brief](#) by Scott Moss; and *The Right and Wrong Kinds of Judicial Activism*, an ACS [Issue Brief](#) by Alan Morrison.

### ***Employment and the Courts***

- How do judges treat claims of employment discrimination? Has the treatment of these claims changed as the composition of the bench has varied?

- For more information on this subject, see *Employment Discrimination Plaintiffs in Federal Court: From Bad to Worse?*, an [article](#) by Dean Stewart J. Schwab and Professor Kevin M. Clermont in the Harvard Law and Policy Review; the ACS Panel Discussion *New Data Unveiled: How the Federal Courts are Treating Employment Discrimination Plaintiffs*, [audio](#) of which is available online; *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007); and *Gross v. FBL Financial Services, Inc.*, 557 U.S. \_\_\_\_ (2009).

### **Congress and the Courts**

- What is the relationship between the legislative and judicial branches? To what extent are judges challenging congressional authority to enact policy through legislation? Are major legislative achievements endangered as a result of court action?
- For more information on this subject, see the ACS Convention Panel *Congress and the Courts*, [video](#) of which is available online; *Citizens United: The Aftermath*, an ACS [Issue Brief](#) by Monica Youn; and *Mandatory Health Insurance: Is It Constitutional?*, an ACS [Issue Brief](#) by Simon Lazarus.

### **The Environment and the Courts**

- How have courts interpreted and implemented landmark environmental statutes? Has this implementation changed over time? Do judges pose a challenge to regulatory oversight of environmental issues? Are the outcomes of environmental cases affected by the identity of the judge who hears the case?
- For more information on this subject, see *Judging NEPA: A "Hard" Look at Judicial Decision Making Under the National Environmental Policy Act*, a [report](#) by the Environmental Law Institute; and the [Issues](#) page at [www.judgingtheenvironment.org](http://www.judgingtheenvironment.org).

### **Voting and the Courts**

- How have courts dealt with issues of democracy, voting, and elections? What do decisions like *Citizens United* say about the future treatment of issues of voting in the federal judiciary?
- For more information on this subject, see the ACS Convention Panel *Citizens United v. FEC: The Decision, Its Implications, and the Road Ahead*, [video](#) of which is available online; *Citizens United: The Aftermath*, an ACS [Issue Brief](#) by Monica Youn; *Beyond Citizens United v. FEC: Re-Examining Corporate Rights*, an ACS [Issue Brief](#) by Jeffrey Clements; and *The National Voter Registration Act: Fifteen Years On*, an ACS [Issue Brief](#) by Estelle Rogers.