

Consensus Questions

The first four consensus questions for your consideration and discussion cover the basic principles outlined in the scope of the Federal Judiciary Study.

1= strong consensus for, 2=moderate for, 3=strong consensus against 4=moderate against, 5=no consensus	1	2	3	4	5
1. Transparency is essential to an effective Federal Judiciary.					
2. Accountability is essential to an effective Federal Judiciary					
3. Independence is essential to an effective Federal Judiciary.					
4. Ethics is essential to an effective Federal Judiciary.					

The remaining questions deal with more specific aspects of the workings of the Federal Judiciary.

	1	2	3	4	5
5. There should be binding universal standards of conduct for judges and Justices at all levels of the Federal courts.					
6. Court hearings, documents filed in the court, and rulings for all federal cases should be open and available to the public					
7. There should be an effective enforcement mechanism for the Federal Judiciary code of ethics at all levels.					
8. An enforcement mechanism should include a process to require a judge or Justice recuse him or herself when a reasonable litigant would believe that the judge or Justice has a bias against any party or an issue raised in the case.					
9. A judge or Justice's decision and rationale to recuse or not recuse should be publicly disclosed in writing.					
10. Federal judges and Justices should be subject to rigorous financial disclosure requirements, enforcement, and penalties for all financial benefits, including but not limited to income, gifts, paid speaking engagements, and book deals.					
11. Stability of law (stare decisis) is a value that contributes to a strong democracy.					
12. Public perception of the Supreme Court's legitimacy contributes to a strong democracy.					

Comment (up to 100 words) on each of these questions, as needed.

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If you have further comments to share on your League's consensus meeting, either on content or process, please share it here (up to 400 words).

Principles listed in the white papers:

	Legitimacy	Judicial independence	Judicial Accountability	Judicial transparency	Judicial ethics	Nonpartisanship	Stability of Law	Impartiality/fairness	Decision-making capability	Representativeness	Effectiveness	Judicial Restraint
Financial disclosure	●	●	●	●	●			●				
Judge shopping	●	●	●		●	●						
Ethics & ethics enforcement	●	●	●	●	●							
Legitimacy	●		●	●	●		●		●			
Recusal & Recusal Reform	●	●	●	●	●	●						
Diversity among judges	●							●	●	●	●	
Shadow Docket & its effects	●	●		●		●	●	●				●
Stare Decisis	●						●					
Structural Reform	●	●	●			●	●		●	●	●	
	9	6	6	5	5	4	4	3	3	2	2	1

issues of judicial integrity

SCOTUS announced a voluntary code of their own making, November 2023.¹ However, the voluntary code has no enforcement mechanism and was criticized from its inception for including carveouts to permit questionable ethical behavior to continue. Each Justice makes their own decisions on when and whether to recuse. When they do, it is typically without explanation, i.e., without transparency for or against recusal.

Proposals for recusal reform tend to focus on making the process more transparent and accountable.

For example:

- Require Justices to state reasons for recusal or failure to recuse.
- Establish a formal procedure for recusal decisions to be reviewed by another Justice, multiple Justices, or the entire Court.
- Reform recusal laws to make it easier for Justices to avoid financial conflicts.

Representation:

. In 2023, there were **1,423 sitting Article III federal judges** in the US. ¹ The federal bench remained overwhelmingly male (68 percent) and white (76 percent). In 2022, there were **59 Black women (4 percent)** among Article III judges.² As of October 1, 2023, the federal judicial system demographics were: ● **US Supreme Court: 9 justices** (5 men, 4 women; 6 white, 2 Black, 1 Hispanic) ● **US Courts of Appeals: 299 judges** (202 men, 97 women; 229 white, 31 Black, 20 Hispanic, 16 Asian American, 3 mixed race or ethnicity or other) ● **US District Courts: 1,097 judges** (750 men, 347 women; 825 white; 130 Black; 83 Hispanic; 34 Asian American; 4 Native American; 21 mixed race or ethnicity or other)

Term Limits — "lifetime" used to be shorter tenure:

- **Before 1950** — Justices served an average of **11 to 15** years
- **1970–present** — average tenure of justices who have left is around **25 years**
- **In past 20 years** — average **28 years**
- Some sitting justices are projected to serve as long as **35 years**