

**Report from March 11, 2025, Consensus Discussion  
on New LWVUS Position on the Federal Judiciary**  
Prepared by Janet Welch

**1. Transparency is essential to an effective Federal Judiciary.**

Strong consensus. The discussion focused on the recent erosion of transparency through increased use of the Supreme Court's shadow docket. There was agreement that trust in the Supreme Court rests on the explanations the Court provides in writing for its decisions. Decisions that are perceived to be made in secret, without explanation and identification of the Justices making the decision, fuel confusion and skepticism about the Court.

**2. Accountability is essential to an effective Federal Judiciary.**

Strong consensus, with a concern that mechanisms to hold judges and justices accountable must have safeguards to ensure that the mechanisms are not wielded inappropriately, to advance political purposes. The members discussed the impediments to accountability – lifetime tenure, the public's general lack of knowledge about the judicial branch and judges, competing views within the judicial branch itself about the role of a justice (calling balls and strikes vs. application of diverse lifetime perspectives). Members' strong support for this statement was based on agreement that, given the critical importance of the judiciary to both the proper functioning of government and public confidence, the lack of an effective mechanism to ensure that judges do their job in the public interest, apolitically and with integrity, poses a substantial challenge.

**3. Independence is essential to an effective Federal Judiciary.**

Strong consensus, tempered by a recognition that independence must be understood within the context of the constitutional construct of balance of powers. Members discussed the ways in which Congressional constitutional authority to finance the judicial branch and restructure Art. III courts can be an instrument for effectuating improvements in the judicial branch, but can also be abused (referencing, for example, the inconsistent approaches and rationale for filling the Scalia and Ginsburg vacancies).

**4. Ethics is essential to an effective Federal Judiciary.**

Strong consensus. Recent revelations about conflicts of interest by members of the Supreme Court drove the intensity of the support for this statement. Several members noted the ineffectiveness of self-policing by the Justices.

**5. There should be binding universal standards of conduct for judges and Justices at all levels of the Federal courts.**

Strong consensus. This consensus flowed naturally from the discussion about Statement 4.

**6. Court hearings, documents filed in the court, and rulings for all federal cases should be open and available to the public.**

Strong consensus. Members agreed that trust and confidence in the judiciary rests on there being no impediments to easy public access to decisions, courthouses, and information about judicial officers, with rare exceptions – national security, individual privacy, and trade secrets. Exceptions should be very limited, and the rationale for exceptions and redactions should be explained in each case.

**7. There should be an effective enforcement mechanism for the Federal Judiciary code of ethics at all levels.**

Strong consensus.

8. **An enforcement mechanism should include a process to require a judge or Justice to 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.**

Strong consensus. Members were deeply dissatisfied with the current process that allows Supreme Court justices to decide for themselves whether and when to recuse themselves from cases in which their impartiality might reasonably be questioned. The rule of necessity was described as akin to a “get out of jail free” card, and members agreed that a fair method of replacing a recusing Justice would be a welcome improvement. Expanding the number of Justices was also mentioned as a way to mitigate the problem somewhat.

9. **A judge or Justice’s decision and rationale to recuse or not recuse should be publicly disclosed in writing.**

Strong consensus.

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.**

Strong consensus.

11. **Stability of law (stare decisis) is a value that contributes to a strong democracy.**

Strong consensus. Members voiced concern about the disruption and erosion of public confidence in the Court that reversals of long standing precedent can cause, but also recognized that over a substantial period of time, social change can sometimes justify such reversals. When a major reversal occurs, unanimous decisions are helpful to bolstering public confidence that the decision is based on the law and not ideology; if unanimity can’t be a rule, it could at least be a norm that serves as a guardrail.

12. **Public perception of the Supreme Court’s legitimacy contributes to a strong democracy.**

Strong consensus. Members noted that confidence in the Supreme Court is eroding at a time when public confidence in the judiciary and rules of law is critically important and urgent. Contributing factors that were noted included inexplicable decisions, regal trappings of the Court, an aura of eliteness and arrogance, contentious confirmation hearings, news revelations.

---

#### Comments on the Study, Consensus Meeting, and Timeline

Members expressed satisfaction with the process and consensus meeting, and were especially enthusiastic about the study materials. Members noted that although the 12-month timeline was ambitious that it was justified given the urgency of the need for a position.