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Would a TV Judge Qualify for Appointment to the Supreme Court?

When President Donald Trump was compiling his short list of judges whom he could possibly nominate to the Supreme Court bench, one of the more surprising names that percolated to the surface was Fox News personality Jeanine Pirro.

Pirro, the host of Fox News's *Justice With Judge Jeanine*, has been an unwavering supporter of President Trump since the early days of his campaign. Her ties apparently go beyond political advocate, however, as *New York Magazine* reports that Pirro and her husband, Albert Pirro, "did legal work for Trump and they traveled in a lot of the same Greater New York social and political circles."

Existing in the same socio-economic sphere with the president is typically not considered sufficient qualification for the Supreme Court, though.

As for Pirro's more germane entries in her curriculum vitae, her biography on the Fox News website lists her previous legal experience thus: "In 1975, she became an assistant district attorney for Westchester County, New York and was the first female to prosecute murder cases there. In 1990, Pirro was elected as the first woman to serve as a Westchester County Court judge."

An unbiased analysis of Pirro's resume reveals that she certainly possesses the experience necessary to merit a shot at the other Trump administration position she reportedly coveted, that of attorney general.

Such a nomination wouldn't seem such a stretch, however, as would a nod to take an open seat on the Supreme Court.

The *New York Magazine* article suggests that the nomination of Pirro would "trouble the sleep" of Progressives, and they derisively declare that "'Justice' Jeanine would not pass the laugh test in legal circles."

Maybe not, but for constitutionalists, the most important question would be whether Pirro would pass muster if George Washington, Thomas Jefferson, or James Madison were president. For information on what the Founders considered critical qualifications for a judge of the federal judiciary, the first step is to read the Constitution.

Article III, Section 1 of the Constitution sets out the entirety of what could be considered constitutional qualifications for a federal judge (whether he sits on the Supreme Court or one of the inferior federal courts). That provision reads:

> The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

That's it! Whereas the Constitution mandates the age and citizenship status for representative, senator, and president, the Framers placed no such strictures on who could serve on the Supreme Court.

Article II, Section 2 grants the president the power, with the advice and consent of the Senate, to "appoint … judges of the Supreme Court." That section, too, is void of any necessary standards to which a potential Supreme Court justice must meet.

Believe it or not, the *Federalist* (commonly called *The Federalist Papers*) is likewise laconic on the competencies necessary for nomination to the highest federal court.

Additionally, the *Records of the Debates of the Federal Convention of 1787*, kept by James Madison, offer no enlightenment as to the Framers' conception of the ideal federal jurist.

While even an in-depth study of these key sources of the intent of the Framers fails to produce a clear position on the judicial qualification question, there is a discourse on the judiciary that casts at least a little light on the subject.

In *Federalist*, No. 78, Alexander Hamilton begins his series of letters on the federal judiciary. His description of this branch could be considered a clue as to what type of person the Founders would consider worthy of a seat on the Supreme Court.

Note, too, that the following text should be required reading for every American in this era of judicial activism and legislating from the federal bench. Were we to see appointed people to the Supreme Court who were committed to remaining within the sphere of authority laid out below, the rights we enjoy as children of the Creator would be much less threatened by the black-robed oligarchs than they are now.

Here are some relevant selections from that letter:

> The standard of good behavior for the continuance in office of the judicial magistracy, is certainly one of the most valuable of the modern improvements in the practice of government. In a monarchy it is an excellent barrier to the despotism of the prince; in a republic it is a no less excellent barrier to the encroachments and oppressions of the representative body. And it is the best expedient which can be devised in any government, to secure a steady, upright, and impartial administration of the laws.
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> Whoever attentively considers the different departments of power must perceive, that, in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them.
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> It equally proves, that though individual oppression may now and then proceed from the courts of justice, the general liberty of the people can never be endangered from that quarter … and that as nothing can contribute so much to its firmness and independence as permanency in office, this quality may therefore be justly regarded as an indispensable ingredient in its constitution, and, in a great measure, as the citadel of the public justice and the public security.
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> The complete independence of the courts of justice is peculiarly essential in a limited Constitution.

> Some perplexity respecting the rights of the courts to pronounce legislative acts void, because contrary to the Constitution, has arisen from an imagination that the doctrine would imply a superiority of the judiciary to the legislative power. It is urged that the authority which can declare the acts of another void, must necessarily be superior to the one whose acts may be declared void. As this doctrine is of great importance in all the American constitutions, a brief discussion of the ground on which it rests cannot be unacceptable.
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> There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution, can be valid.
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> It is far more rational to suppose, that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority.
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> A constitution is, in fact, and must be regarded by the judges, as a fundamental law.
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> Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both; and that where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former. They ought to regulate their decisions by the fundamental laws, rather than by those which are not fundamental.

So, as you can see, Hamilton did not lay out a list of qualifications for federal judge. He did, however, place clear boundaries around the authority of such a judge and therein one may deduce that, as desired by the Framers of the Constitution, a Supreme Court judge would, first, be a person of good behavior; second, be someone who recognizes the relative impotence of the judicial branch; three, would not deign to legislate from the bench; fourth, would consider the Constitution to be the ultimate expression of the will of the people and would base all his decisions on the blackletter of the Constitution and not on his personal permutation thereof.

So, Jeanine Pirro is no less or more constitutionally qualified to be a Supreme Court judge than the people occupying that bench today. But given the predilection of some of those jurists to usurp the power of making laws, Pirro might have proven to be more qualified than some of the activists appointed in years past.

Image: Screenshot from Foxnews.com