

**LEX Scholarship Question  
October 2018**

**Due date for submissions: January 14, 2019 postmark date**

The question of whether judges should be elected by the people, or appointed by the people's elected representatives, is one that continues to be relevant in the United States today. There are arguments on both sides: Thomas Jefferson argued that members of the judicial branch should be elected rather than appointed, because "the safest depository of the power of society is the people themselves." On the other hand, Alexander Hamilton disagreed strongly with Jefferson, contending that judges should not be directly politically accountable because they interpret and define the boundaries of individual rights and rules that prohibit the government from taking certain actions; he explained that actions might be popular with a majority of voters, but still clash with the legal rights of others in the minority.

Today, commentators are still divided -- some argue that election makes judges too politically accountable, and this leads judges to court public opinion rather than uphold the law: as retired U.S. Supreme Court Justice John Paul Stevens warned, if the judiciary becomes another political branch responsive to political pressure, then there would be no branch of government that could check the power of legislatures or executives when they infringe on the constitutional rights of individuals. Commentators who argue that the judiciary should be elected point out that judges protected from public scrutiny feel freer to advance personal agendas; they argue that we elect our legislators to make our laws, so the judges who apply those laws should face the same election, and that the competition between candidates in judicial elections allows citizens the opportunity to make informed decisions about those whom they want to sit on the bench.

Please write an essay about whether judges should be elected or appointed; remember that you should assess the pros and cons of election versus appointment with reference to judicial opinion, commentator analysis, and current and future political reality. Also remember that you can argue for any "hybrid" plan you'd like to create. Your essay should take the form of an advocacy position grounded in authority, and not be based only on personal opinion grounded in emotion. Citation to relevant authority -- both primary and secondary -- is critical.