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Summary Article: **Breyer, Stephen G.**

From *American Government A to Z: The Supreme Court A to Z*

When President Bill Clinton introduced Stephen G. Breyer (1938-) as his second Supreme Court nominee in May 1994, he described the federal appeals court judge as a “consensus-builder.” The reaction to the nomination proved his point: Breyer won immediate praise from Republican and Democratic senators alike and a range of legal experts. After joining the Court, Breyer generally aligned himself with the moderate-to-liberal bloc of justices and earned a reputation for carefully balanced questions from the bench and judiciously written opinions.

Breyer was born in San Francisco, California, and graduated from Stanford University and Harvard Law School. He clerked for Supreme Court Justice Arthur Goldberg and helped draft Goldberg's influential opinion in the 1965 case establishing the right of married couples to use contraceptives. Breyer served two years in the Justice Department's antitrust division and then took a teaching position at Harvard Law School in 1967. His areas of specialty included administrative law, antitrust, and economic regulation.

Breyer took leaves of absence from Harvard to serve as an assistant prosecutor in the Watergate investigation in 1973, special counsel to the Senate Judiciary Committee's Administrative Practices Subcommittee from 1974 to 1975, and the full committee's chief counsel from 1979 to 1980. He worked for Sen. Edward Kennedy, D-Mass., but also established good relationships with Republican committee members.



Stephen G. Breyer

Source: Collection of the Supreme Court of the United States/Steve Petteway

Breyer's ties to senators paid off when Democratic president Jimmy Carter nominated him for the federal appeals court in 1980. Action on the nomination was not completed before Republican Ronald

Reagan was elected president in November, but Republican senators allowed a vote on Breyer's nomination anyway.

As a judge, Breyer was regarded as scholarly, judicious, and open-minded with generally conservative views on economic issues and more liberal views on social questions. He wrote two books on regulatory reform that criticized economic regulations as anticompetitive and questioned priorities in some environmental and health rulemaking. He also served as a member of the newly created United States Sentencing Commission from 1985 to 1989. He later defended the commission's guidelines against criticism from judges and others who viewed them as overly harsh and restrictive.

Breyer faced criticism in his confirmation hearings for casting pro-business votes in regulatory cases and failing to disqualify himself from cases that might have affected his investment in the British insurance syndicate, Lloyd's of London. After promising to dispose of the Lloyd's investment, Breyer won Senate confirmation easily, 87-9. He joined Ruth Bader Ginsburg as the Court's second Jewish member. Not since the 1930s, when Louis Brandeis and Benjamin Cardozo served together for six years, had there been two Jewish justices on the Court.

Along with Ginsburg, Breyer took liberal views on a range of issues, including civil rights, women's rights, federalism, and church-state issues. He wrote the Court's 5-4 decision in 2000 striking down a Nebraska law banning so-called partial birth abortions, a ruling effectively nullified by the Court's decision in 2007 to uphold a comparable federal law. He wrote strong dissents from a series of closely divided conservative rulings that upheld vouchers for parochial school students (2002), limited racial diversity policies by local school districts (2007), and established a personal right to possession of firearms under the Second Amendment (2008, 2010).

Breyer's record on civil liberties and criminal issues was generally liberal with some exceptions. He gave police somewhat greater leeway than the other liberal justices in Fourth Amendment search cases. He was also more inclined than other liberal justices to limit legal remedies in civil litigation. And he adopted a flexible approach on First Amendment issues to permit government regulation in a range of areas, including campaign finance, commercial speech, and sexual expression. He was one of two dissenters in 2011 when the Court struck down a state ban on violent video games for minors.

As a former Senate staff member, Breyer showed a special sensitivity to congressional prerogatives. In 1995 he wrote a strongly worded dissent from the Court's decision to strike down a law passed by Congress to prohibit possession of firearms near schools. He dissented again when the Court in 2000 struck down a law allowing victims of gender-motivated crimes to sue their attackers in federal court and in 2001 when the Court protected state governments from private damage suits for violating the federal disability rights law.

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