

## **Thank you for signing up for our TalkFest session on "RBG"!**

As the name TalkFest suggests, it is our intention for everyone to be able to participate and decide which of the issues raised by the movie they find most engaging. It is in the hope of enriching the conversation that we are providing some additional resources and questions, not as required reading or points to be followed but as food for thought.

### **Additional resources:**

- [Interview with Supreme Court Justice Ruth Bader Ginsburg](#) (audio + transcript)
- [How Justice Ruth Bader Ginsburg Viewed Herself as an Originalist](#)
- [After hearings, experts debate how Ketanji Brown Jackson would interpret the Constitution](#)
- [On the Basis of Sex](#) (biopic, available on Rukuten, Apple TV)

### **Food for thought**

- How does the opening scene of RBG set the stage for the rest of the film?
- How do the filmmakers make Justice Ginsburg, a serious, reserved, elderly woman into a relatable character?
- What led to RBG's status as pop culture icon? What does RBG symbolize?
- Despite her strong views on abortion rights and equality for women, Ginsburg received almost unanimous bipartisan support at her 1993 confirmation hearing (93-3). How was this possible? The same was true of Thurgood Marshall (1967) the first Black person on the court (69-11) and Sandra Day O'Connor (1981) the first woman on the court (99-0). How does this compare to Ketanji Brown Jackson's confirmation hearing?
- The documentary describes RBG as someone who often strove to build consensus, look for common ground and willing to concede and make compromises. How does this compare to the political climate of today? When should we stick firmly to our principles and when should we be willing to compromise?
- RBG's political beliefs were liberal and progressive, and yet she was close friends with Antonin Scalia, one of the most conservative justices on the Supreme Court. How was this possible? Could you be close friends with someone who does not share your political beliefs?
- As more conservative justices were appointed to the Supreme Court by Republican presidents, Ginsburg increasingly disagreed with the majority opinions, often authoring the dissenting opinion. Some say her dissenting opinions are more significant than her majority ones. Why are dissenting opinions of the Supreme Court so important?
- The President of the United States gets to nominate Supreme Court Justices to a lifelong position. How can one president thus affect a generation of legal outcomes and precedents? In your opinion, is this a fair process?

## Originalism

- Originalism, a type of judicial interpretation of a Constitution that aims to follow how it would have been understood or was intended to be understood at the time it was written, is often considered to be a conservative position. However, both Ruth Bader Ginsburg and Ketanji Brown Jackson consider(ed) themselves originalists.
- [How Justice Ruth Bader Ginsburg Viewed Herself as an Originalist](#) explains that “Conservative originalists generally tend to see the Constitution’s spare text as excluding rights not explicitly identified; progressive originalists more often look to give life to the Constitution’s broad promises that haven’t always been reflected in reality.”
- [After hearings, experts debate how Ketanji Brown Jackson would interpret the Constitution](#) explains Jackson’s “methodology” for deciding cases, which begins with her clearing her mind of “any preconceived notions” and “trying to figure out what those words mean as they were intended by the people who wrote them” but applying “those principles to modern day.”
- What do you think, should Constitutions be living documents changing according to societal changes or should they be strictly interpreted as intended by those who wrote them?
- In this [Interview](#) RBG presents her views on the Second Amendment Right to Bear Arms. What do you make of her argument?
- Constitutional scholar Paul Freund is quoted in the documentary as saying "the Court should never be influenced by the weather of the day but inevitably they will be influenced by the climate of the era." How do you interpret these words?

## States' Rights

- Defined as “the rights belonging to the various states, especially with reference to the strict interpretation of the Constitution, by which all rights not delegated by the Constitution to the federal government belong to the states.”
- During a press call to discuss his evaluation of Supreme Court nominee Ketanji Brown Jackson, Senator Mike Braun (R-Ind) stated the Supreme Court never should have established the national right to an abortion via Roe v. Wade. Individual states, he insisted, ought to be able to decide these things “through their own legislation, through their own court systems.” What do you think?
- Based on this logic, Braun was asked if he thought the same standard should apply to Loving v. Virginia, the 1967 decision in which the Supreme Court struck down state laws banning interracial marriage and Griswold v. Connecticut, the 1965 decision that ruled that the Constitution protected the marital right to contraception, Braun again said that the states should decide these matters. Several hours later, after being severely criticized, he retracted his statement on interracial marriage, saying that he had misunderstood the question.
- In your opinion, should individual states be able to make their own laws on issues like these, or should they be decided at a federal level? Where should we draw the line?

## **RBG cases to consider**

**Obergefell v. Hodges** (2015) ruled that state bans on same-sex marriage and on recognizing same-sex marriages duly performed in other jurisdictions are unconstitutional. Ginsburg wrote: “Marriage was a relationship of a dominant male to a subordinate female. That ended as a result of this court’s decision in 1982 when Louisiana’s Head and Master Rule was struck down ... Would that be a choice that states should [still] be allowed to have? To cling to marriage the way it once was?”

**Whole Woman’s Health v. Hellerstedt** (2016) tackled Texas’s Omnibus Abortion Bill (known widely as H.B. 2), which imposed strict restrictions and requirements on abortion providers. Ginsburg wrote: “When a State severely limits access to safe and legal procedures, women in desperate circumstances may resort to unlicensed rogue practitioners... at great risk to their health and safety. So long as this Court adheres to *Roe v. Wade* and *Planned Parenthood of Southeastern Pa. v. Casey*, Targeted Regulation of Abortion Providers laws like H.B. 2 that do little or nothing for health, but rather strew impediments to abortion, cannot survive judicial inspection.”

**Shelby County v. Holder** (2013) invalidating a key provision in the Voting Rights Act that required certain jurisdictions with a history of discrimination to undergo federal oversight before enacting any changes in voting procedure. In her dissenting opinion Ginsburg wrote: "The sad irony of today's decision lies in (the court's) utter failure to grasp why the (law) has proven effective. Throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet."

## **TalkFest Project**

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