

# Toby Heytens

## Nominee for the United States Court of Appeals for the Fourth Circuit

*President Joe Biden nominated Toby Heytens to the United States Court of Appeals for the Fourth Circuit on July 13, 2021 for the seat being vacated by Judge Barbara Keenan, who is taking senior status. Mr. Heytens has dedicated his legal career to public service as Solicitor General for the Commonwealth of Virginia, a professor at the University of Virginia, School of Law, and an Assistant to the Solicitor General at the U.S. Department of Justice.*

### **Biography**

Mr. Heytens was born in 1975 in Minnesota and graduated from Superior High School in Superior, Wisconsin. He then graduated in 1997 from Macalester College in St. Paul Minnesota and went on to the University of Virginia School of Law (UVA), graduating in 2000. There he received the Alumni Association Award for Academic Excellence for having the highest grade-point average in his graduating class. During law school he served on the *Virginia Law Review* and received the Alumni Association Award for Academic Excellence. The note he wrote as a student, "School Choice and State Constitutions" received the Alumni Association Best Note Award.

After graduating from law school, Mr. Heytens clerked for Chief Judge Edward R. Becker of the U.S. Court of Appeals for the Third Circuit, was a Bristow Fellow in the U.S. Solicitor General's Office, and then clerked for U.S. Supreme Court Justice Ruth Bader Ginsburg.

### **Legal Experience**

Toby Heytens' career has spanned many different aspects of the legal field. After clerking for Ruth Bader Ginsburg, he went on to work at O'Melveny & Myers LLP.

Mr. Heytens then joined the faculty at the University of Virginia School of Law. He first took a leave of absence from teaching from 2007 to 2010 to serve in the U.S. Solicitor General's Office, where he argued six cases before the U.S. Supreme Court. After returning to UVA, he served as co-director of the school's Supreme Court Litigation Clinic. After eight years of teaching, in 2018, Attorney General Mark R. Herring appointed Mr. Heytens as Solicitor General of Virginia. In total, Mr. Heytens has argued ten cases before the United States Supreme Court during his career. Illustrative of his work, Mr. Heytens [represented](#) the Commonwealth in a case at the Virginia Supreme Court involving a statue of Robert E. Lee that Governor Ralph Northam ordered to be taken down last year.

In 2018, Mr. Heytens, along with Virginia Attorney General Mark Herring, argued a case before the United States Supreme Court regarding whether the state attorney general or the [Virginia House of Delegates](#) had ultimate authority to

appeal a federal ruling that the state's legislative districts were drawn in a way that sorted voters by race and constituted unlawful racial gerrymandering. Mr. Heytens and the Attorney General successfully argued that the VA House of Delegates did not have standing, thus dismissing the case at the Supreme Court. This helped put an end to racial gerrymandering in the 11 districts that were in question and also earned Mr. Heytens and Mr. Herring the [Best Brief Award](#) from the National Association of Attorneys General.

Mr. Heytens also successfully [argued](#) to the Supreme Court in defense of Virginia's 30-year-old radioactive uranium mining ban. State Attorney General Herring [called](#) the Court's ruling in the case "a big win for the health and safety of Virginians and our environment."

In 2017, Mr. Heytens was appointed by the United States Court of Appeals for the Fourth Circuit to [represent](#) an indigent, mentally ill pretrial detainee who challenged the dismissal of his civil rights complaint against prison officials. Mr. Heytens briefed and argued the case, stating that the case represented one of "the rare exceptional circumstances that rendered the district court's denial of [his] requests for counsel an abuse of discretion." The court agreed and remanded the case for further proceedings.

Recently, Mr. Heytens [argued](#) a case on behalf of consumers in front of the Virginia Supreme Court that involved arbitration agreements between an unlicensed internet lender and Virginia consumers. The Supreme Court sided with the consumers and refused to enforce the arbitration agreements.

### ***Professional Activities and Accolades***

During his tenure as a professor at the University of Virginia School of Law, Mr. Heytens served as co-director of the Supreme Court Litigation Clinic and coached the three-time national champion undergraduate trial advocacy team. He has dedicated time to coaching Mock Trial teams and was honored in the Coaches Hall of Fame for the American Mock Trial Association this year. He also served as a visiting assistant professor at Cornell Law School.

Mr. Heytens has been acknowledged by [The Green Bag](#) for his exceptional contribution to accessible legal scholarship and students have said his "meticulous legal mind is always several steps ahead of them, but that his challenging yet accessible approach to teaching allows them to rise to his level of understanding." Because of this, Mr. Heytens was honored by the University of Virginia with the All-University Teaching Award in 2016 and also received a Raven Award in 2015 for excellence in service and contribution to the University of Virginia.