

INTRODUCTION

This report documents how numerous federal judges have given political contributions while they were under consideration for a lifetime appointment to the bench.

A four-month investigation of judges appointed by President George W. Bush since 2001 found that at least two dozen gave money to key Republicans while they were under consideration for an appointment. Those six appellate court judges and 18 district court judges gave a total of more than \$44,000, while they were judicial candidates, to politicians who were influential in their appointments. Some gave money to the campaign of the president himself after they were officially nominated.

In all, at least 23 percent of Bush-appointed appellate judges (11 out of 47) and more than 16 percent of Bush-appointed district judges (34 out of 202) gave campaign contributions of some kind while they were under official consideration for a judgeship. Five of the appellate court judges and 15 of the district judges gave political donations after they were nominated.

There are no laws or rules prohibiting campaign contributions by a candidate for the federal bench. But some ethics experts and Bush-appointed judges say that political giving is inappropriate for those seeking a federal judgeship. Creating even an appearance of impropriety, they say, can shake the public's confidence in the impartiality and independence of the judiciary.

"We just have so many problems with contributions to judicial campaigns, and so many problems with campaign contributions to members of the legislature," said Jeffrey M. Shaman, a judicial ethics expert at DePaul University College of Law. "If someone wants to be a judge, then they should, in their sound discretion and wisdom, voluntarily decide not to make these contributions anymore."

(A compilation of opinions on the issue from sitting federal judges can be found in the "Judges' Comments" section of this report.)

CIR's investigation analyzed the campaign contributions of 249 judges who were appointed by President Bush to U.S. District and Circuit courts around the country. While some judges did not give contributions at all in the years leading up to their appointments, others continued to make political donations while their nominations were pending in the Senate.

The report provides an overall snapshot of each judge's history of campaign contributions since 1990, while highlighting contributions made when an individual was under consideration for an appointment. The summaries often note other past political activity and political connections that were identified through the research, but the study does not attempt to provide a comprehensive survey of political involvement. Special attention is given to contributions to the president and Republican senators. Home-state senators of the president's party traditionally have some influence in the selection of judicial nominees, especially for district judgeships. In some cases, especially when a state's senators are of the opposite party, a governor or member of the House of Representatives may have added influence.

Though the official [Code of Conduct for United States Judges](#) prohibits political contributions by sitting federal judges, it does not address donations by judicial candidates seeking appointment. The First Amendment protects the right of Americans to make political contributions.

The American Bar Association, however, is [overhauling](#) its own judicial code of conduct, and the current draft of its new guidelines would not allow campaign contributions by judicial candidates. The ABA will vote on whether to adopt the overall revision of its code – which serves as a recommendation to states and the federal judiciary – in February.

“Once you cross into the world of judging or being a candidate for judge you take on a new responsibility to begin living by the rules of your new job,” said William Hodes, a professor emeritus of law at Indiana University who helped draft the proposed ABA code. “Since sitting federal judges can’t donate even a dime anyway, my guess is that it would be very comfortable for the federal system to say once you have had direct talks with the senator with an eye toward [a judgeship], or if the White House has contacted you, then you’re a candidate and you have to back off.”

Though this study focuses on Bush-appointed judges, political giving by judicial candidates is by no means unique to the current administration. In fact, CIR’s research also turned up a Clinton-appointed judge who apparently made campaign contributions while on the bench. (See Appendix A.)

Also, after being alerted to CIR’s investigation, the [Committee for Justice](#) – a conservative Washington D.C.-based advocacy group – looked at a sampling of President Clinton’s judicial nominees, according to Sean Rushton, the group’s executive director. The Committee for Justice found 10 judges confirmed to the bench during the Clinton Administration who gave contributions of some kind after they were nominated, according to [information](#) provided by Rushton.

Methodology

The campaign contributions detailed in CIR’s report came from Federal Election Commission records and state government offices. The report focuses on federal contributions. Though it notes state contributions where appropriate, the study is not intended to be a comprehensive look at state-level political giving.

Federal contributions from 1997 to the present were found through the FEC’s [online database](#). Federal contributions from 1990 to 1996 were found through online databases of FEC records provided by the [Center for Responsive Politics](#) and [Political Money Line](#). CIR checked the original FEC records for contributions where the donor’s identity was not clear. The study used address information on contribution records to help identify the donors. State-level campaign contributions were found through the online database of the [Institute on Money in State Politics](#) and numerous state government online databases. Because of irregularities in the data, some contributions can only be found by entering an individual’s first name in the last name field, or other variations.

To determine when a person was “under consideration” for a judicial appointment, the study used publicly available dates that specified when an individual was involved in the selection process. These dates often came from the questionnaires that nominees submit to the Senate Judiciary Committee. Other details were found in press reports or statements made by members of Congress. CIR used all of these sources of information to cross-reference the details of a judicial candidate’s selection process with the candidate’s campaign contributions.

However, the date that a candidate applies for a judgeship or is recommended to the President is not necessarily publicly disclosed. Thus, in some instances, the precise time period when a candidate was under official consideration was not available. In those cases, this report provides the available information on the timing of the candidate’s selection process, as well as the campaign contributions around that time.

All judges who made campaign contributions while under consideration for their judgeships, or near the time of their nominations, were contacted in writing. CIR detailed the information that would be included in this report and asked for their comments, as well as a correction of any errors. CIR also contacted many judges who gave campaign contributions in the past -- but not while they were judicial candidates -- in order to ascertain their opinions on the issue, and for clarification of their histories of political giving. Many judges did not respond. The responses of those who did are included in the “U.S. Circuit Court Judges” and “U.S. District Court Judges” sections of this report.