



DATA FOR *PROGRESS*

To: Demand Justice

From: Jon Green, Co-Founder of Data for Progress

Subject: The Ideology of Trump's Judges

What We Want to Know:

Trump-skeptical conservative activists and pundits frequently cite the president's power to appoint ideologues throughout the federal judiciary as a reason for their continued support for his administration. Any Republican -- and especially a Republican who is willing to outsource much of his judicial selection to the Federalist Society -- is better for these policy demanders than any Democrat on this dimension. Anecdotally, it certainly seems like Trump has consistently delivered conservative victories via his judicial appointments. But does this collection of anecdotes add up to data? In quantitative terms, how much is Trump delivering for the conservative base by shaping the federal judiciary on their terms?

What We Did:

In order to quantify Trump's ideological pull on the federal judiciary, we use campaign finance (CF) scores compiled by political scientists Maya Sen and Adam Bonica. CF-scores are generated using the DIME (Database on Ideology, Money in Politics, and Elections) dataset, and allow for the estimation of ideological ideal points [based on patterns in political donations](#) (for Bonica and Sen's academic application of CF-scores to judges and lawyers, [click here](#)). The key assumption in using CF-scores is that if a given individual -- say, a [judge](#) -- donates money to more liberal (conservative) candidates, it's reasonable to infer that they have more liberal (conservative) policy preferences. By analyzing the campaign contributions that judges make, specifically the ideology of candidates the judges contribute to, Sen and Bonica estimate ideological point estimates for members of the federal judiciary. Judicial CF-scores are highly correlated with the Judicial Common Space scores Data for Progress [analyzed here](#), and have been used in other analyses of Trump's nominees [here](#). For judges who had not previously made campaign contributions, scores were imputed using a variety of available covariates that are correlated with observed judicial CF-scores (such as their age, race, employment history, party of appointing president, and ideologies of home state senators and the judiciary committee chair who oversaw their confirmation). The imputations were estimated separately for Republican and Democratic presidencies, and were validated with a comparison of imputed values to over-imputed values (imputed values for which observed CF-scores are available).

What We Found:

Below, we show summary statistics for each president's judicial appointments in the dataset from Nixon through Trump. At first glance, Trump's appointments stand out as being conservative, white, and male relative to his predecessors -- though they do not seem to be significantly younger than the appointments made by earlier presidents. Over 90 percent of

Trump's appointments so far have been white and three quarters have been men, combining for over 70 percent who are both white and male. Thirty-seven percent of Barack Obama's appointments were white men.

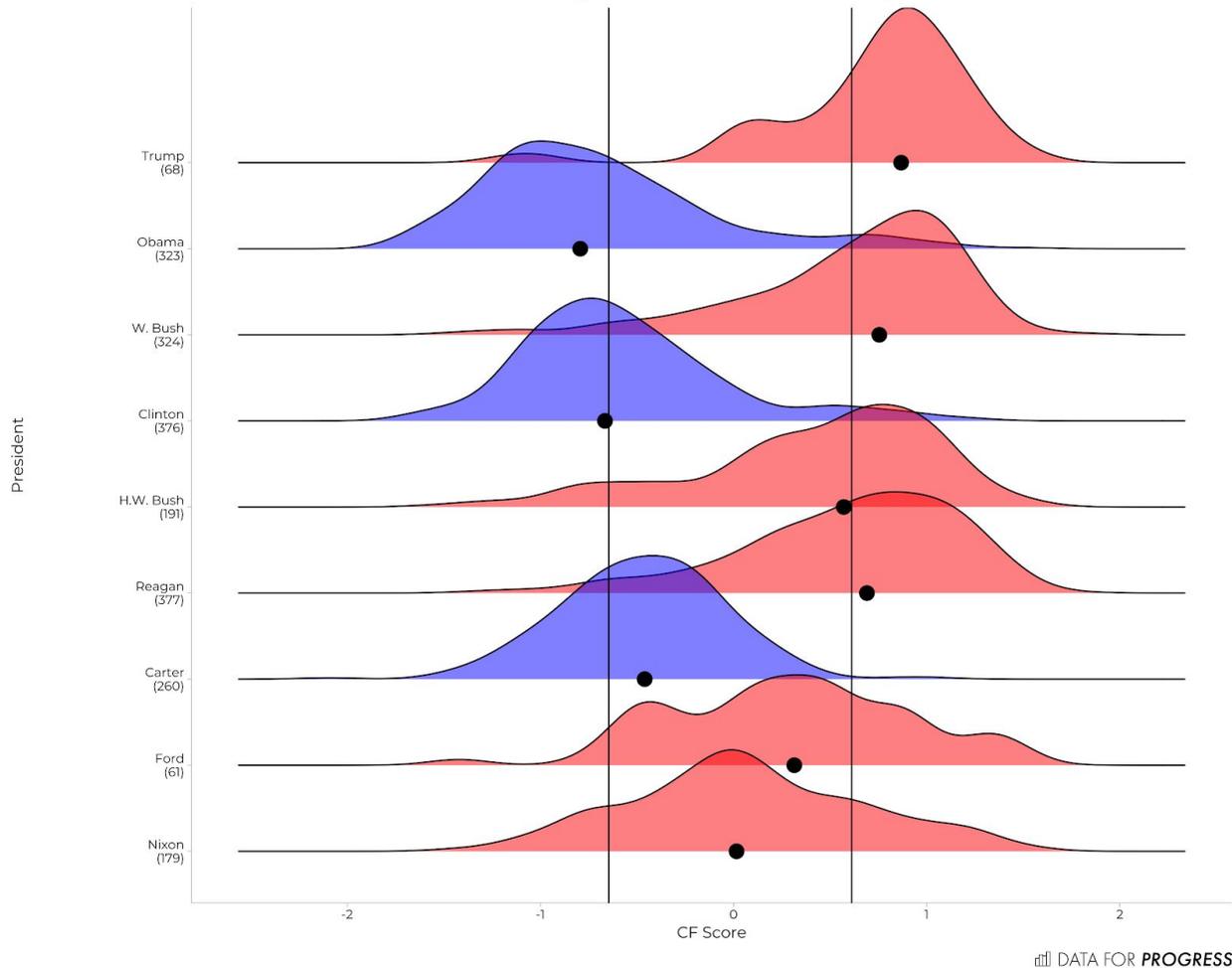
President	Total Appointments	Mean CF-Score	Median CF-Score	Median Age	Proportion White	Proportion Male	Proportion White Male
Richard M. Nixon	179	0.07	0.02	51	0.95	1	0.95
Gerald Ford	61	0.29	0.32	52	0.92	0.98	0.90
Jimmy Carter	260	-0.47	-0.46	51	0.78	0.84	0.65
Ronald Reagan	377	0.61	0.69	51	0.94	0.92	0.86
George H.W. Bush	191	0.42	0.57	50	0.90	0.81	0.73
William J. Clinton	376	-0.57	-0.67	50	0.75	0.71	0.52
George W. Bush	324	0.62	0.76	51	0.82	0.78	0.67
Barack Obama	323	-0.70	-0.79	52	0.65	0.59	0.37
Donald J. Trump	68	0.75	0.87	50	0.93	0.75	0.71

Note: Data from DIME dataset as of October 10, 2018.

Next, we plot the distributions of CF-scores for each president's judicial appointees to district courts and courts of appeals, from Richard Nixon to Donald Trump. The median CF-score of each president's appointments are shown with dots, the median score of each party's appointments across the full time range are shown with vertical lines, and the number of appointments each president made are shown under their names. As the plot shows, judicial appointments have become more ideologically polarized over time by this metric, though this is possibly in part due to the fact that Congress has polarized over time and the scores are based on the ideology of campaign donation recipients.

DISTRIBUTION OF JUDICIAL CF SCORES BY PRESIDENT

Missing values imputed where applicable; party medians shown with vertical lines and president medians shown with dots
Number of appointments with estimable CF scores in parentheses



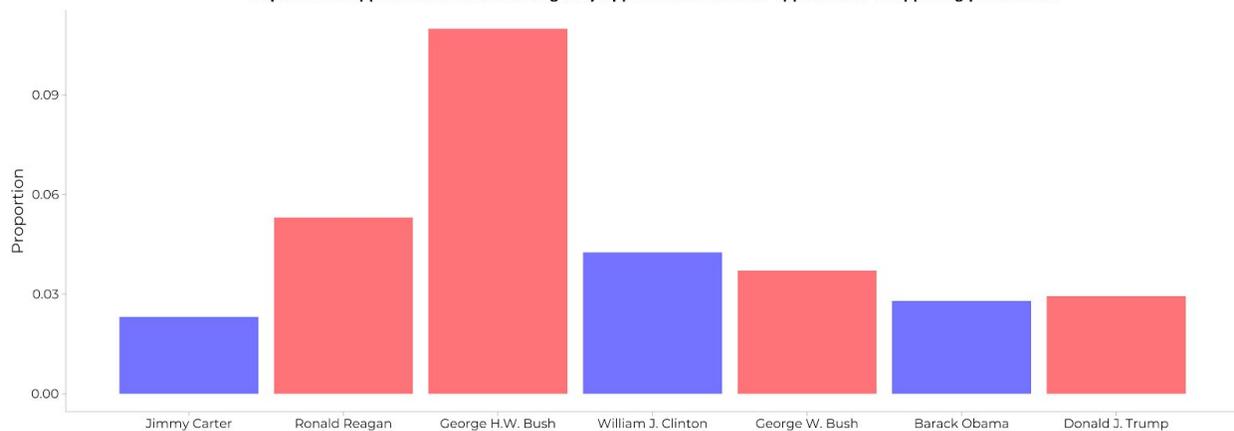
The first thing to notice in these distributions is that Trump's judges are, for the most part, reliably conservative. Trump's median appointment is more conservative than George W. Bush's, and is more conservative than Obama's median appointment was liberal. To be clear, the long-term polarization trend shown in the chart could be in part due to polarization trends in Congress, but this is less of a concern when comparing more recent presidents who also governed during times of heightened congressional polarization. While it is still relatively early in his presidency, and this pattern may change as Trump makes more appointments, these data currently support conservative activists' suspicion that despite whatever other objections they may have with him, President Trump is a useful vehicle for moving the federal judiciary to the right.

The second thing to notice in these distributions is that, from Reagan onward, there is a consistent pattern in judicial appointments. Trends in polarization aside, the distribution of judicial nominations tends to have a co-ideological mean and a long tail through the center. Every president -- even Trump -- occasionally appoints ideological opponents to the federal

judiciary, which reflects the check that senators typically have on appointments in their home states. The two appointments on the far left of Trump’s distribution were to district courts in Minnesota and Hawaii, for example. Ever since Carter, who [expanded the federal judiciary](#) in 1978, a small share of every president’s judicial appointments have been more ideologically opposed to them than the median judge appointed by the previous out-party president. For example, just under three percent of Barack Obama’s appointments were more conservative than George W. Bush’s median appointment, while slightly more than ten percent of George H.W. Bush’s appointments were more liberal than Jimmy Carter’s median appointment. The latter case could perhaps be due to H.W. Bush succeeding a Republican president, which may have influenced the pattern of which positions became vacant during his term.

RATES OF IDEOLOGICALLY OPPOSED APPOINTMENTS

Proportion of appointments more ideologically opposed than median appointment of opposing predecessor

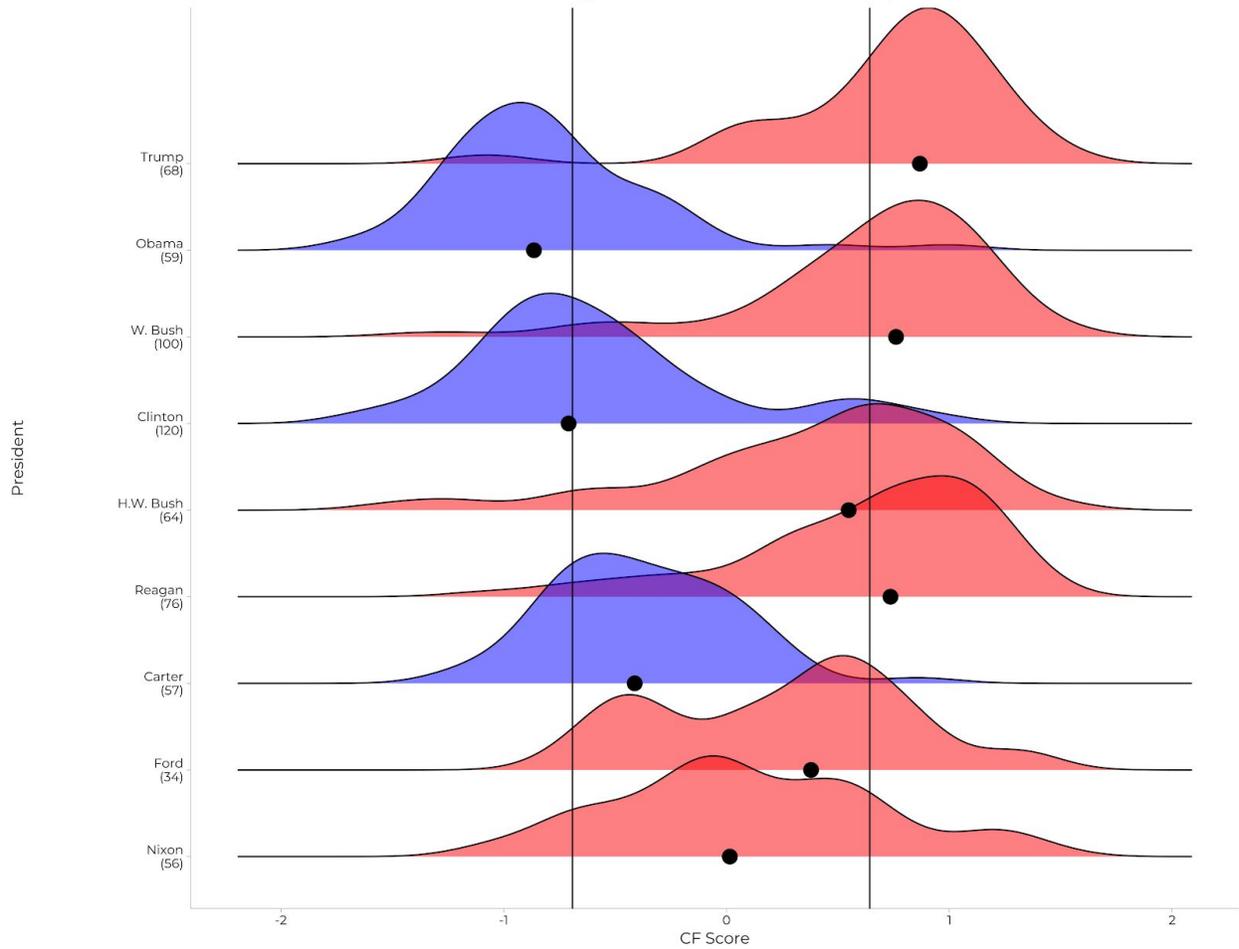


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The third thing to notice is that Trump likely has a long way to go in terms of the sheer volume of appointments a president normally makes. Clinton, Bush, and Obama all made well over 300 appointments for which we have estimable CF-scores over the course of their two terms, while we only have 68 appointments in the DIME dataset for Trump so far. This could partially explain why the distribution of Trump’s appointments is not as smooth as his immediate predecessors, and leaves open the possibility for change as he continues to fill vacancies. However, patterns in judicial appointments for each president have generally emerged by this point in Trump’s presidency, as the below plot -- which shows the same distributions but limited to judges who were appointed during the first two years of each president’s term -- illustrates. What’s more, Trump has appointed more judges through the first two years of his term than Obama had at a similar point in his presidency, though he is well behind the paces set by Bill Clinton and George W. Bush.

FIRST TWO YEARS JUDICIAL CF SCORE DISTRIBUTION

Missing values imputed where applicable; party medians shown with vertical lines and president medians shown with dots
Number of appointments with estimable CF scores in parentheses

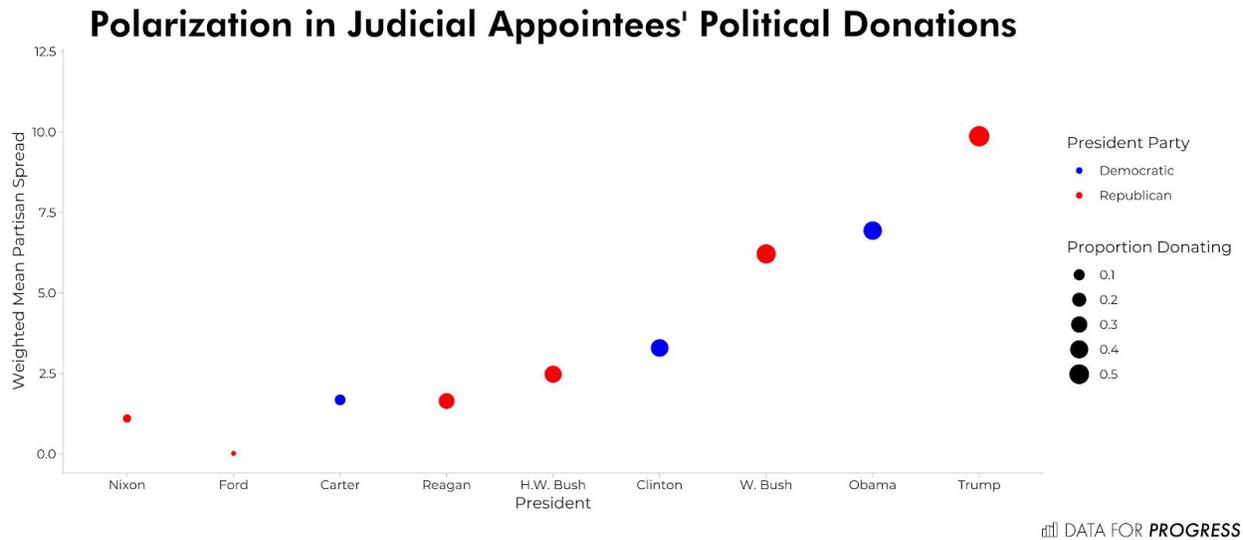


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For a final robustness check, we examine the individual donations that judicial appointees make and find a similar polarization trend. For each judge, we tallied up the number of times they've contributed to Democratic and Republican candidates and subtracted the former from the latter to create a measure of partisan spread. We then organized these judges by appointing president, allowing us to calculate a) the proportion of each president's judicial appointments who have given money to major party candidates and b) the spread of partisan donations given by each president's judicial appointees. We use those values to calculate a weighted average partisan spread for each president: the average partisan spread among appointees who donated to major party candidates, multiplied by the proportion of appointees who donated to major party candidates. The result is a measure of how partisan each president's judicial appointee has been, on average.

As the below plot shows, Donald Trump's judicial appointees have been more politically active in general (a greater share have donated to major party candidates) and have been more Republican in particular (their partisan spread has the highest absolute value of all presidents in

the set). The weighted mean partisan spread of Barack Obama's judges is slightly more Democratic than George W. Bush's was Republican (Obama's average appointee made just under seven Democratic donations on net; Bush's made just over six Republican donations on net), while Trump's weighted mean partisan spread is slightly under 10.



Overall, these data support the notion that Donald Trump is delivering for conservative activists through his judicial appointments, installing reliably Republican judges where he can. Moreover, they also show that in contrast to his [slow pace in staffing](#) some executive agencies, Trump has appointed judges at rates similar to his predecessors. With Republicans gaining two seats in the Senate, it is unlikely that Trump will moderate his appointment pattern over the next two years -- and it is likely that Trump highlights his record of judicial appointments when rallying his base for re-election.