

Democrats Condemn Big-Money Campaigns Backing Judicial Nominations

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As Senate Majority Leader Mitch McConnell buttons up plans to fill Justice Ruth Bader Ginsburg's seat on the Supreme Court, Democrats on Tuesday condemned the influence of dark money over the judiciary.

Senator Sheldon Whitehouse crossed Capitol Hill to testify to the House Judiciary Committee that corporate interests are strategically investing in securing nominees to the federal bench who will pass down rulings that eliminate campaign finance regulations, stifle voting rights for minorities and roll back pollution controls.

He warned that conservative groups like the Federalist Society and the [Judicial Crisis Network](#) are pumping money into the process of nominating lifetime appointees to the federal bench.

"A well-stocked bench can deliver things elected members of Congress would never vote for," Whitehouse said, citing the 2013 decision in *Shelby County v. Holder* that rolled back a key provision of the Voting Rights Act.

[Federalist Society](#) members have accounted for 86% of Trump's nominees to circuit judgeships as of May 2020, the Senate Democratic Policy and Communications Committee said in a [recent report](#).

"The facts show that it is the nerve center for a complex and massively funded GOP apparatus designed to rewrite the law to suit the narrow-minded political orthodoxy of the Federalist Society's backers," the report states.

Warning of big-money influence over the integrity of the courts, Whitehouse, a co-author of the Senate report, said that a single anonymous source donated \$17.9 million to the Judicial Crisis Network during the confirmation fight involving President Barack Obama's blocked nominee to the Supreme Court, U.S. Circuit Judge Merrick Garland, and President Donald Trump's nomination of Neil Gorsuch to the bench.

The following year, a single anonymous source once again dropped over \$17 million in the Judicial Crisis Network's coffers before Justice Brett Kavanaugh was nominated.

"What do they expect in return?" Whitehouse asked the committee.

Amanda Hollis-Brusky, a politics professor at Pomona College, said whether judges are actually influenced by membership in conservative groups like the Federalist Society is not relevant.

"What matters is how all of this looks to 'We the People,'" Hollis-Brusky said.

After Whitehouse left the hearing without taking questions, House Judiciary Ranking Member Jim Jordan asked Hollis-Brusky whether she agreed with the Rhode Island senator's accusation that conservatives under Trump had "captured the courts."

The professor declined to take a position on whether the courts had been "captured" but said: "The appearance of capture is certainly reasonable given the optics of the Trump administration and how big of a role the federalist society has played in judicial nominations."

Jordan then took aim at Democrats pushing to increase the number of justices on the Supreme Court from nine to 15 if Trump fills Ginsburg's seat before the election.

"I don't think you can come up with a better way of describing capturing the court than what the Democrats are proposing," the Ohio congressman said.

Ilya Shapiro, director of the Robert A. Levy Center for Constitutional Studies at the Cato Institute, a conservative think tank based in Washington, reinforced Jordan, denying the influence wielded by the Federalist Society over judicial nominations.

"There is no monolith," Shapiro said, conceding that he has been a Federalist Society member for 20 years.

He added: "What it is is a signaling mechanism to show that you're unafraid to declare ... that you are committed to certain principles: originalism, textualism, certain modes of interpretation."

Representative Martha Roby, an Alabama Republican, also asked the GOP witness whether an increase in donor disclosure would chill free speech.

"The freedom of association and private association are important conditional protections," Shapiro replied.

But retired U.S. District Judge for the District of Massachusetts Nancy Gertner warned that, no matter your political affiliation, the hundreds of Federalist Society members sitting on the federal bench should raise concern.

The conservative group is closely linked to the five Republican-appointed justices on the bench today and provides shortlists for judicial nominees to Trump's White House.

"One has to be troubled with a single-lane pipeline to the United States Supreme Court and the lower federal courts which is a pipeline that is monitored and controlled by one organization," Gertner said.

On Saturday, the president plans to announce his pick to fill a third seat on the high court, with Seventh Circuit Judge Amy Coney Barrett and 11th Circuit Judge Barbara Lagoa emerging as top candidates.

McConnell said Tuesday that the Senate Judiciary Committee will proceed with the nomination per historic precedent. His announcement comes as Democrats argue the GOP leader has brazenly reversed his firm stance during Obama's final year in office that Justice Antonin Scalia's seat could not be filled in the months leading up the election.

Less than six weeks before voters head to the polls, Gertner, now a Harvard Law School professor, said Trump's conduct in the heated process will be just as important as the person selected for the lifetime appointment.

"How you select plays a role in determining the respect with which the public holds the bench," the retired judge said.