

 **HE'LL DESTROY OUR COURTS**

One power of the president of the United States arguably exceeds all others: the power to appoint judges, especially to the Supreme Court. In exercising this power, the president exerts an influence on the country's direction that can long exceed his term of office. In his courtroom, a judge is virtually king, with only appeals (which are costly and unlikely to succeed) as a remedy. That said, the possibility of George Bush winning an election and appointing judges for four more years should put a chill in anyone disturbed by his scary agenda.

Here are profiles of Shrub's Top Ten Most Outrageous Judicial Nominees so far, ranked in terms of extremism and the sinister influence of the appointments:

10. Deborah Cook: Nominated to the Sixth Circuit Court of Appeals, a frequent dissenter on the Ohio Supreme Court. According to Ohio Citizen Action, her dissents "reveal a callousness toward the rights of ordinary citizens which offends any reasonable sense of justice." In one case, after she dissented from a ruling favorable to a disabled worker, the court majority criticized her opinion for its "lack of statutory support for its position," and termed it "confused," "pure fantasy," and "entirely without merit." In another case, she dissented from a ruling striking down a state law that made it virtually impossible for an employee to recover damages from an intentional tort committed by the employer. Strong opposition to her confirmation came from Ohio organizations concerned with protecting individual, civil, and consumer rights.

9. Jeffrey Sutton: Nominated to the 6th Circuit Court of Appeals, he's described even by one of his supporters as the "perfect kind of poster child for what Democrats see as prototypical George W. Bush judges." He has written in favor of declaring the Violence Against Women Act unconstitutional,

and strongly supported restricting federal protections against discrimination and injury based on disability, race, age, sex, and religion. More than 70 national organizations and over 375 regional, state, and local groups have opposed his confirmation.

8. Terrence Boyle: Nominated to the 4th Circuit, he is a North Carolina federal district court judge and former staffer of the retired Senator Jesse Helms. Civil rights groups have criticized his right-wing judicial activism and bad record in civil rights cases. He has been reversed twice by the Supreme Court, once in a unanimous ruling, for deciding that congressional redistricting in North Carolina improperly favored minority voters. He was also reversed when he refused to accept a settlement of a sex discrimination claim against a state agency, even though the agency had agreed.

7. Janice Rogers Brown: Nominated to the U.S. Court of Appeals for the District of Columbia, currently on the California Supreme Court. Was rated “unqualified” by the state bar’s commission on judicial nominees, because of her lack of experience and tendency to inject personal views in her judicial opinions. Confirmed in 1996 after a contentious fight, she has authored many confrontational and harsh opinions—often in dissent—that would undermine civil rights, workers’ rights, reproductive rights, and the environment.

6. James Leon Holmes: Nominated to the District Court for the Eastern District of Arkansas, this former president of Arkansas Right to Life once compared abortion to the Holocaust. He wrote that “concern for rape victims [with regard to abortion policy] is a red herring because conceptions from rape occur with approximately the same frequency as snowfall in Miami.” He also wrote that “the wife is to subordinate herself to her husband” and that “the woman is to place herself under the authority of the man.”

5. Miguel Estrada: Nominated to the District of Columbia Court of Appeals, a stepping-stone to the Supreme Court. A member of several right-wing activist groups, he is widely deemed to be a stealth candidate, the Latino Clarence Thomas. He dodged questions from the Senate Judiciary Committee and failed to provide records from his work in the Solicitor General’s office. However, a former supervisor in the Solicitor General’s office concluded that Estrada “lacks the

judgment” and is “too much of an ideologue to be an appeals court judge.” Claimed under oath that he never personally considered *Roe v. Wade*—a curious lack of intellectual interest from a former Supreme Court clerk. Because of his lack of candor, Senate Republicans failed seven times to cut off debate on his nomination. An unconvincing campaign was launched to claim that their opposition was racially motivated, although opponents included the Puerto Rican Legal Defense and Education Fund and the Congressional Hispanic Caucus. Also opposed were the Congressional Black Caucus and many civil rights, labor, environmental, and women’s organizations. He withdrew his name from consideration on September 4, 2003.

4. Carolyn Kuhl: Nominated for the powerful 9th Circuit Court of Appeals, currently a California Superior Court judge. The deputy solicitor general in Reagan’s Justice Department, she has a long record of opposing reproductive rights, civil rights, and environmental protections. Under Uncle Ronnie, she wrote what a former Solicitor General called “the most aggressive memo” urging the Supreme Court to overturn *Roe v. Wade* as “flawed.” Also supported tax breaks for Bob Jones University, despite its ban on interracial dating, a position protested in a letter signed by 200 of her colleagues. (By an 8-1 vote, the Supreme Court rejected Kuhl’s position.) Urged the Supreme Court to overrule its precedent on “associational standing,” which allows unions, environmental groups, and other associations to protect the rights of their members in court. The court rejected Kuhl’s argument without dissent. She was reversed unanimously by the Court of Appeals after dismissing an invasion of privacy claim brought by a breast cancer patient whose doctor allowed a drug salesman in the examining room during an examination of the patient’s breasts. Kuhl’s nomination is opposed strongly by a coalition of unions, women’s, environmental, civil rights, and other organizations.

3. William Pryor: Nominated to the 11th Circuit Court of Appeals, currently a “states’ rights” advocate as Alabama’s attorney general. As the state’s top lawyer, he has authored or joined numerous briefs challenging the constitutionality of a host of federal employment protections, including the Americans with Disabilities Act, the Violence Against Women Act, the Family and Medical Leave Act, the Fair Labor

Standards Act, and the Age Discrimination in Employment Act. He has also urged Congress to eliminate a key provision of the Voting Rights Act, which protects the right to vote for African Americans and other minorities, and he opposed a Supreme Court ruling that tying prisoners to hitching posts was cruel and unusual. A vocal anti-choice activist, he called *Roe v. Wade* “the day seven members of our high court ripped the Constitution and ripped out the life of millions of unborn children.” His nomination, opposed by more than 200 organizations, including unions, civil rights, environmental, women’s, disability rights and other groups, is pending before the full Senate, where it is being filibustered by Senate Democrats.

2. Priscilla Owen: Nominated to the 5th Circuit Court of Appeals, she has a long career as a conservative judicial activist—including on the Texas Supreme Court under Bush. (Karl Rove received \$228,000 for campaign services for her election to the court). She is one of the most frequent dissenters from an already-conservative court. In at least one such case, the Texas Legislature immediately passed legislation to overrule her position. She opposes reproductive rights; when Bush White House Counsel Alberto Gonzales was a justice alongside her in Texas, he wrote that her dissent on an abortion-related case constituted “an unconscionable act of judicial activism.” (Gonzales criticized her positions on 11 cases.) Until nominated by Bush, she never voted to allow a minor to bypass parental notification. As a lawyer in private practice, her meal ticket was representing big oil companies, and she continues to favor big business. Opposed to environmental protections and consumers’ interests, she favors employers and insurers. She has opposed the claims of injured and harassed workers, undermined the state workers’ compensation system, and voted in favor of corporations that sold defective products. She was rejected by the Senate Judiciary Committee in 2002 but renominated by Bush in 2003. Her nomination is pending now before the full Senate, where it is being filibustered by Senate Democrats.

1. Charles Pickering: Nominated to the 5th Circuit Court of Appeals, he’s a longtime opponent of civil rights. He authored an article in law school that described how laws that ban interracial marriage could be better enforced; his recommendations became Mississippi law. As a judge, he

pressured federal prosecutors to show leniency to a convicted cross-burner (which, besides being offensive, was clearly unethical conduct). He voted to fund and had contact with the infamously racist Sovereignty Commission, then lied about it to the Senate Judiciary Committee. He has criticized the “one-person, one-vote” principle and important provisions of the Voting Rights Act, and ruled against the vast majority of people bringing job bias suits before him. None of this should be surprising: he is strongly supported by Senate Majority Leader Trent Lott. Has displayed hostility to Constitutional rights, including the Miranda warning, and has been reversed 15 times for violating “well-settled principles of law.” As a state senator, Pickering opposed *Roe v. Wade* (indeed, fought for a Constitutional amendment to ban abortion), and voted against the Equal Rights Amendment. Was rejected by the Senate Judiciary Committee in 2002 but renominated by Bush in 2003.

These are the worst, but they are consistent with the bulk of his nominations, which reveal an extreme shift in the judiciary.

Five of these nominees are members of the Federalist Society, which covertly wields great influence over our courts and promotes an increasingly right-wing agenda. The Society’s greatest champions are Antonin Scalia and Robert Bork, two of the scariest legal minds of the last 50 years. Among its members on the Bush Team are Attorney General John Ashcroft, Deputy Attorney General Larry Thompson, Solicitor General Ted Olson, Deputy White House Counsel Timothy Flanigan, DOE Secretary Spencer Abraham, Interior Secretary Gale Norton, and Eugene Scalia (Antonin’s boy). Another member is the frothing bimbo right-wing mouthpiece Ann Coulter, who summed up the Federalist Society philosophy on *Real Time* with Bill Maher, when she explained that the U.S. is a nation of both limited government and limited rights. The two claims speciously justify any goal of their overtly reactionary agenda. Within the group, there is a contempt for basic civil rights and a lack of recognition for any right to privacy.

Shrub and company have predictably whined about the supposed Democratic Party “obstructionism” in blocking judicial nominees via filibuster. According to Bush, “Today, we are facing a crisis in the Senate, and therefore a crisis in our judiciary. . . I believe a fresh start is possible.” His solution? Require the Senate to vote within 180 days after a nominee is submitted, without filibusters.

Republican Senate Majority Leader Bill Frist supports this: “The need to reform is obvious and it is now urgent.”

In fact, the Judicial Conference of the United States has labeled a number of judiciary vacancies as “emergencies”—but there’s nothing new here. Judicial vacancies are at their lowest point in 13 years. Any crisis currently in the system is a leftover of the Clinton years, when Republicans blocked 35% of his judicial nominations (which weren’t as ideological as Dubya’s). During the Bush years, the Senate has confirmed over 140 nominees, and filibustered only two so far. So who’s the obstructionist?

Of course, such a scenario is described even by Republicans as a “nuclear option.” It would be so even if the Senate head making the ruling and the president making the nominations were legitimately elected. Whether they’ll actually do this remains to be seen, but that it was even proposed reveals how little respect the Bush Team has for nearly 150 years of rule of law.

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