

WOMEN IN THE FEDERAL JUDICIARY: STILL A LONG WAY TO GO

Over the past three decades, an increasing number of women have joined the legal profession. For twenty-five years, approximately 45% of law students have been women; in the last decade, women's representation has approached 50%.¹ But the number of women in the federal judiciary has stagnated.² It is of critical importance to increase the representation of women on the federal bench.

When women are fairly represented on our federal courts, those courts are more reflective of the diverse population of this nation. When women are fairly represented on the federal bench, women, and men, may have more confidence that the court understands the real-world implications of its rulings. For both, the increased presence of women on the bench improves the quality of justice: women judges can bring an understanding of the impact of the law on the lives of women and girls to the bench, and enrich courts' understanding of how best to realize the intended purpose and effect of the law that the courts are charged with applying. For example, one recent study demonstrated that male federal appellate court judges are less likely to rule against plaintiffs bringing claims of sex discrimination, if a female judge is on the panel.³

But to obtain true gender diversity, the number of women in the federal judiciary, including the Supreme Court, must be increased.

- Upon the confirmation of Associate Justice Elena Kagan, the Supreme Court counts three women among its nine Justices for the first time in history, still only one-third of the members of that Court. Only four of the 112 Justices ever to serve on the highest court in the land have been women.
- Forty-nine of the 163 active judges currently sitting on the thirteen federal courts of appeal are female (30.1%).⁴ When broken down by circuit, women's representation on several of these individual courts is even lower than on the courts of appeals overall:
 - The Eighth Circuit has only one female judge among its eleven members (9%), who is the only woman *ever* to have been appointed to that court. And, there is currently only one female judge among the Tenth Circuit's ten active members (10%).
 - Women are also vastly underrepresented on the Third Circuit (where they make up about 15% of judges) and the Fourth Circuit (about 21%).
- Approximately 30% of active United States district (or trial) court judges are women.⁵
- For women of color, the numbers are even smaller.

- There are 66 women of color serving as active federal judges across the country, including 34 African-American women, 25 Hispanic women, six Asian-American women, and one woman of Hispanic and Asian descent. There are no Native American women among the over 750 active federal judges across the country.⁶
- There are only ten women of color on the U.S. courts of appeals. Four of those women sit on the Ninth Circuit Court of Appeals, two sit on the DC Circuit, and one woman of color sits on each of the First, Fourth, Sixth and Seventh Circuits. Therefore, there are seven federal courts of appeals without a single active minority woman judge.⁷
- If currently pending judicial nominees are confirmed, the number of women in the federal judiciary would increase.
 - Of President Obama's 182 judicial nominees to date (including his nominees to the Supreme Court), 78 are women.⁸ Thirty of these nominees have been women of color (fourteen African-American women, nine Hispanic women, six Asian-American women, and one woman of Hispanic and Asian descent).
 - Forty-five percent of President Obama's confirmed nominees have been women.⁹ This has increased the number of women on the First, Second, Fourth, Sixth, Ninth, Eleventh and Federal Circuits as well as on a number of district courts.
 - With the confirmation of the sixteen currently pending female nominees, women's representation on a number of other circuits will improve – including the Third Circuit (an increase to 21%), the Fourth Circuit (a further increase to 27%), the Ninth Circuit (a further increase to 41%), and the Eleventh Circuit (a further increase to 33%).

By the nominations he has made to date, President Obama has taken the first step in increasing the representation of women, including women of color, on the federal bench. Now it is up to the Senate to do its part, to improve access to, and the quality of, justice for all Americans.

¹ American Bar Association, "First-Year and Total J.D. Enrollment by Gender, 1947-2010," *available at* http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/1947_2010_enrollment_by_gender.authcheckdam.pdf (last visited Feb. 21, 2012).

² Administrative Office of the U.S. Courts, Third Branch Online Newsletter (October 2010), Federal Bench Gender Snapshot: Gender of All Federal Judges 1998-2009 (showing that the total number of women in the federal judiciary hovered around 500 in 2007, 2008, and 2009), *available at* http://www.uscourts.gov/News/TheThirdBranch/10-10-01/Federal_Bench_Gender_Snapshot.aspx.

³ Christina L. Boyd, Lee Epstein & Andrew D. Martin, *Untangling the Causal Effects of Sex on Judging*, 54 AM. J. POL. SCI. 389 (2010), *available at* <http://epstein.law.northwestern.edu/research/genderjudging.pdf>. See also Vicki Kramer, Alison Konrad, & Sumru Erkut, Executive Summary at 2, *Critical Mass on Corporate Boards: Why Three or More Women Enhance Governance*, Wellesley Centers for Women, 2006 (finding that once three or more women serve on a corporate board, "women are no longer seen as outsiders and are able to influence the content and process of board discussions more substantially"); Sarah Childs & Mona Lee Krook, *Critical Mass Theory and Women's Political Representation*, 56 POL. STUD. 732 (2008) (when the percentage of women in legislatures surpasses a minimum – generally 30% – women are able to introduce and pass more bills on women's issues).

⁴ NWLC calculations based on data from the Federal Judicial Center's website, *available at* <http://www.uscourts.gov>.

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⁶ NWLC calculations based on data from the Federal Judicial Center's website, *available at* <http://www.uscourts.gov>.

⁷ *See id.*

⁸ NWLC calculations were based on the nomination information found on the U.S. Senate Judiciary's Website, *available at* <http://judiciary.senate.gov/nominations/Materials111thCongress.cfm>; <http://judiciary.senate.gov/nominations/Materials112thCongress.cfm>.

⁹ NWLC calculations based on data from the Federal Judicial Center's website, *available at* <http://www.uscourts.gov> (fifty-eight women have been confirmed out of 128 total confirmations to all federal courts).