

JUDGES & THE COURTS

FACT SHEET

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. Since 1992, women's representation in law school classes has approached 50%.¹ Despite record numbers of female judicial nominees, the percentage of female judges, however, is far lower.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.

Fifty-two of the 163 active judges currently sitting on the thirteen federal courts of appeal are female (about 32%).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:

- There is currently only one female judge among the Tenth Circuit's ten active members (10%).
- Women are also vastly underrepresented on the Eighth Circuit (where they make up 18% of judges), the Third Circuit (about 16%), and the Fourth Circuit (about 27%).

Approximately 30% of active United States district (or trial) court judges are women.⁵

- But there are still over a dozen district courts around the country where there has never been a female judge.⁶

For women of color, the numbers are even smaller.

- There are 68 women of color serving as active federal judges across the country, including 33 African-American women, 24 Hispanic women, nine Asian-American women, and one woman of Hispanic

and Asian descent, and one woman of Hispanic and African-American descent. There are no Native American women among the over 750 active federal judges across the country.⁷

- There are only 11 women of color on the U.S. courts of appeals. Five 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.⁸

If currently pending judicial nominees are confirmed, the number of women in the federal judiciary would increase.

- Of President Obama's 260 judicial nominees to date (including his nominees to the Supreme Court), 112 are women.⁹ Thirty-nine of these nominees have been women of color (20 African-American women, 10 Hispanic women, seven Asian-American women, one woman of Hispanic and Asian descent, and one woman of African-American and Hispanic descent).
- Slightly over 41 percent of President Obama's confirmed nominees have been women.¹⁰ This has increased the number of women on the First, Second, Third, Fourth, Sixth, Eighth, Ninth, Eleventh and

Federal Circuits as well as on a number of district courts. Nine judges have been confirmed as the first woman judge in their district; six more as the first woman circuit court judge in their state.¹¹

- The number of women of color on the federal bench has increased dramatically as well. The number of Asian-American women judges has quadrupled, and includes the first Asian-American circuit court judge. Seven states have their first African-American female judges, and three states have their first Hispanic female judge.
- With the confirmation of the 24 currently pending female nominees, women's representation on a number of other courts will improve – including the D.C. Circuit, the Tenth Circuit (from 10 to 25%) and the Eleventh Circuit (a further increase to 33%).

By the nominations he has made to date, President Obama has taken an important step towards 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.

For more information please visit

<http://www.nwlc.org/resource/women-federal-judiciary-still-long-way-go-1>

- 1 *First Year and Total J.D. Enrollment by Gender, 1947-2010*, Section of Legal Education and Admissions to the Bar, American Bar Ass'n, available at http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/jd_enrollment_1yr_total_gender.authcheckdam.pdf (last visited May 29, 2013).
- 2 *Federal Bench Gender Snapshot: Gender of All Federal Judges 1998-2009*, Third Branch Newsletter (Admin. Office of the U.S. Courts), Oct. 2010, available at http://www.uscourts.gov/News/TheThirdBranch/10-10-01/Federal_Bench_Gender_Snapshot.aspx (showing that the total number of women in the federal judiciary hovered around 500 in 2007, 2008, and 2009).
- 3 Christina L. Boyd, Lee Epstein & Andrew D. Martin, *Untangling the Causal Effects of Sex on Judging*, 54 Am. J. Pol. Sci. 389, 390 (2010), available at <http://epstein.law.northwestern.edu/research/genderjudging.pdf>. See also Vicki Kramer, Alison Konrad & Sumru Erkut, *Critical Mass on Corporate Boards: Why Three or More Women Enhance Governance*, Executive Summary 2, Wellesley Ctrs. for Women (2006), available at <http://www.wcwonline.org/pdf/CriticalMassExecSummary.pdf> (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. 725, 732 (2008), available at http://krook.wustl.edu/pdf/childs_krook_2008.pdf (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 are based on data from the Biographical Directory of Judges, Federal Judicial Center, U.S. Courts, <http://www.uscourts.gov/JudgesAndJudgeships/BiographicalDirectoryOfJudges.aspx> (last visited Aug. 1, 2013).
- 5 NWLC calculations are based on data from the Biographical Directory of Judges. See *id.*
- 6 These include the Middle District of Alabama, the Middle District of Georgia, the District of Idaho, the Southern District of Illinois, the Southern District of Mississippi, the District of Montana, the Western District of New York, the District of New Hampshire, the Western District of North Carolina, the District of North Dakota, the Eastern District of Oklahoma, the Eastern District of Tennessee, the Western District of Virginia, and the Eastern District of Wisconsin. See Biographical Directory of Judges, *supra*. Female nominees to the District of Montana, the Western District of New York, the District of New Hampshire, and the Eastern District of Tennessee are pending. See www.uscourts.gov.
- 7 NWLC calculations are based on data from the Biographical Directory of Judges, *supra*.
- 8 NWLC calculations are based on data from the Biographical Directory of Judges, *supra*.
- 9 Alliance for Justice, *Judicial Selection Snapshot* 6, <http://www.afj.org/judicial-selection/judicial-selection-snapshot.pdf> (last visited Aug. 1, 2013).
- 10 AFJ, *supra*, at 6.
- 11 Alliance for Justice, *Making History: President Obama's Judicial Nominees*, <http://www.afj.org/judicial-selection/president-obama-female-firsts.pdf> (last visited Aug. 1, 2013).