

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-three of the 164 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 Eleventh Circuit's eight active members (13%).
- Women are also vastly underrepresented on the Third Circuit (where they make up about 17% of judges), the Eighth Circuit (18%), and the Tenth Circuit (about 18%).

Approximately 32% of active United States district (or trial) court judges are women.⁵

- But there are still eleven 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 71 women of color serving as active federal judges across the country, including 37 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 770 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 301 judicial nominees to date (including his nominees to the Supreme Court), 127 are women.⁹ Forty-seven of these nominees have been women of color (25 African-American women, 10 Hispanic women, eight Asian-American women, one Native American woman, one woman of Hispanic and Asian descent, and one woman of African-American and Hispanic descent).
- Slightly under 42 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, D.C., and

Federal Circuits as well as on a number of district courts. Thirteen 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 quintupled, and includes the first Asian-American circuit court judge. Eight states have their first African-American female judges, and three states have their first Hispanic female judge.
- With the confirmation of the 23 currently pending female nominees, women’s representation on a number of other courts will improve – including the Third and Tenth Circuits.

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, 1947-2011*, 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 April. 10, 2014).

2 Approximately 24% of sitting federal Article III judges are women; just over 32% of active federal Article III judges are women. NWLC calculation based on data from the Biographical Directory of Judges, Federal Judicial Center, U.S. Courts, www.uscourts.gov (last visited April. 10, 2014).

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 Laura P. Moyer & Holley Tankerkey, *Judicial Innovation and Sexual Harassment Doctrine in the U.S. Courts of Appeals*, 654 Pol. Res. Q. 784, 793 (2012) (finding that a circuit court was three times more likely to adopt the hostile environment standard for sexual harassment under Title VII when there was a female judge on the panel); 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, *supra* note 2.

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 Western District of North Carolina, the District of North Dakota, the Eastern District of Oklahoma, the Western District of Virginia, and the Eastern District of Wisconsin. See NWLC calculations based on data from the Biographical Directory of Judges, *supra*. A female nominee to the Southern District of Illinois is pending. See www.uscourts.gov.

7 NWLC calculations are based on data from the Biographical Directory of Judges, *supra* note 2. There is one female Native American nominee pending. See note 9, *infra*.

8 NWLC calculations are based on data from the Biographical Directory of Judges, *supra* note 2.

9 Alliance for Justice, *Judicial Selection Snapshot 6*, <http://www.afj.org/judicial-selection/judicial-selection-snapshot.pdf> (last visited Feb. 11, 2014).

10 *Id.*

11 Alliance for Justice, *Making History: President Obama’s Female Judicial Nominees*, <http://www.afj.org/judicial-selection/president-obama-female-firsts.pdf> (last visited Mar. 6, 2014); NWLC calculations based on data from the Biographical Directory of Judges, *supra* note 2.