

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. 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 largely 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.

Fifty-one of the 164 active judges currently sitting on the thirteen federal courts of appeal are female (about 31%).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 27%).

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 65 women of color serving as active federal judges across the country, including 33 African-American women, 24 Hispanic women, seven 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 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.⁷

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

- Of President Obama’s 212 judicial nominees to date (including his nominees to the Supreme Court), 87 are women.⁸ Thirty-three of these nominees have been women of color (fifteen African-American women, ten Hispanic women, seven Asian-American women, and one woman of Hispanic and Asian descent).
- Forty-four 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 16 currently pending female nominees, women’s representation on a number of other courts will improve – including the Third Circuit (an increase to 21%) 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/council_reports_and_resolutions/1947_2010_enrollment_by_gender.authcheckdam.pdf (last visited Mar. 29, 2012).

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.wcwnonline.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 Nov. 14, 2012).

5 NWLC calculations are based on data from the Biographical Directory of Judges. See *id.*

6 NWLC calculations are based on data from the Biographical Directory of Judges. See *id.*

7 NWLC calculations are based on data from the Biographical Directory of Judges. See *id.*

8 NWLC calculations are based on the nomination information found at *Judicial Nominations: 112th Congress*, U.S. Senate Comm. on the Judiciary, <http://www.judiciary.senate.gov/nominations/Materials112thCongress.cfm> (last visited Nov. 14, 2012); *Judicial Nominations: 111th Congress*, U.S. Senate Comm. on the Judiciary, <http://www.judiciary.senate.gov/nominations/Materials111thCongress.cfm> (last visited Nov. 14, 2012).

9 NWLC calculations are based on data from the Biographical Directory of Judges. See *Biographical Directory of Judges*, *supra* note 4 (70 women have been confirmed out of 158 total confirmations to all federal courts).