



JUDGES AND THE COURTS

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 and confirmations, the percentage of female federal 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 and women, and men, may have more confidence that the court understands the real-world implications of its rulings. 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

President Obama has appointed 138 female judges – more than any President to date.⁴ 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.

- Sixty of the 170 active judges currently sitting on the thirteen federal courts of appeal are female (35%).⁵ When broken down by circuit, women's representation on several of these individual courts is even lower than on the courts of appeals overall:
 - o In particular, women are underrepresented on the Third Circuit (where they make up about 15% of judges) the Eighth Circuit (20%) and the Tenth Circuit (25%).
- Thirty-three percent of active United States district (or trial) court judges are women.⁶
 - o There are still 6 district courts around the country where there has never been a female judge.⁷
- For women of color, the numbers are even smaller.
 - o There are 83 women of color serving as active federal judges across the country (only 10.5%) including 43 African-American women, 26 Hispanic women, 11 Asian-American women, one Native American woman, one woman of Hispanic and Asian descent, and one woman of Hispanic and African-American descent.⁸
 - o There are only 12 women of color on the U.S. courts of appeals (7%). 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, Seventh Circuits and Federal Circuit. Therefore, there are six federal courts of appeals without a single active minority woman judge.⁹

By the nominations he has made, President Obama has taken an important step towards increasing the representation of women, including women of color, on the bench. He



has nominated 171 women to fill federal judicial vacancies.¹⁰ He successfully appointed 7 women to federal Courts of Appeals and 17 women to District Courts where no female judges had previously served. In addition, he has appointed more than twice the number of women of color to the federal bench than any previous President, many of whom have similarly broken barriers on the courts on which they now sit.¹¹

During the time remaining in his term, President Obama will have further opportunities to ensure that women are fairly represented in federal courts. In addition to the current vacancy on the Supreme Court, there are 82 vacancies on the federal district and appellate courts, and two of those vacancies are in courts where there has never been a female judge.¹²

Additionally, 26 of the vacancies are for seats formerly held by female judges; therefore nominating (and confirming) fewer than 26 more women will result in a net decrease in women on the bench.¹³ It is of critical importance for the President to nominate individuals who will add gender and racial diversity to the federal bench, and for the Senate to expeditiously process those nominations, in order to improve access to, and the quality of, justice for all those who turn to our federal courts.

For more information please visit

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

- 1 NWLC calculations based on *Enrollment and Degrees Awarded, 1963-2012 Academic Years*, 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/enrollment_degrees_awarded.authcheckdam.pdf (last visited Mar. 17, 2016).
- 2 Approximately 26% of sitting federal Article III judges are women; 34% 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 June 10, 2016).
- 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://www.acsu.buffalo.edu/~jbattist/workshop/Epstein_f08.pdf. See also Laura P. Moyer & Holley Tankerdey, *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 work 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.wcwoonline.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 The White House, *This is the First Time Our Judicial Pool Has Been this Diverse*, <https://www.whitehouse.gov/share/judicial-nominations> (last visited June 10, 2016).
- 5 *Id.*
- 6 *Id.*
- 7 These include the Middle District of Alabama, the District of Idaho, the Southern District of Mississippi, the Western District of North Carolina, the District of North Dakota, and the Eastern District of Oklahoma. NWLC calculations based on data from the Biographical Directory of Judges, *supra*.
- 8 NWLC calculations are based on data from the Biographical Directory of Judges, *supra* note 2.
- 9 NWLC calculations are based on data from the Biographical Directory of Judge, *supra* note 2.
- 10 *Supra* note 4. See also Alliance for Justice, *Demographic Diversity of President Obama's Judicial Nominees*, available at www.afj.org/judicial-selection-dashboards (last visited July 12, 2016).
- 11 *Id.*
- 12 The two vacancies are in the Middle District of Alabama and the District of Idaho. U.S. Courts, *Current Judicial Vacancies*, www.uscourts.gov (last visited June 10, 2016).
- 13 *Id.*

