



## Women in the Federal Judiciary: Still A Long Way to Go

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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%.<sup>[1]</sup> Despite record numbers of female judicial nominees, the percentage of female federal judges, however, is far lower.<sup>[2]</sup> 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.<sup>[3]</sup>

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 172 active judges currently sitting on the thirteen federal courts of appeal are female (almost 35%).<sup>[4]</sup> When broken down by circuit, women's representation on several of these individual courts is even lower than on the courts of appeals overall:
  - In particular, women are underrepresented on the Third Circuit (where they make up about 23% of judges) and the Eighth Circuit (18%).
- Thirty-two percent of active United States district (or trial) court judges are women.<sup>[5]</sup>
  - But there are still nine district courts around the country where there has never been a female judge.<sup>[6]</sup>
- For women of color, the numbers are even smaller.
  - There are 77 women of color serving as active federal judges across the country, including 39 African-American women, 25 Hispanic women, 10 Asian-American women, one Native American woman, one woman of Hispanic and Asian descent, and one woman of Hispanic and African-American descent.<sup>[7]</sup>
  - 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.<sup>[8]</sup>
- If currently pending judicial nominees are confirmed, the number of women in the federal judiciary would increase.
  - Of President Obama's 320 judicial nominees to date (including his nominees to the Supreme Court), 134 have been women.<sup>[9]</sup> Forty-eight of these nominees have been women of color (26 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).
  - About 42 percent of President Obama's confirmed nominees have been women.<sup>[10]</sup> This has increased the number of women on the First, Second, Third, Fourth, Sixth, Eighth, Ninth, Tenth, Eleventh, D.C., and Federal Circuits as well as on a number of district courts. Fourteen judges have been confirmed as the first woman judge in their district; seven more as the first woman circuit court judge in their state.<sup>[11]</sup>
  - The number of women of color on the federal bench has increased dramatically as well. The number of Asian-American women judges has tripled, 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 11 currently pending female nominees, women's representation on a number of other courts will improve.

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.

<sup>[1]</sup> 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](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/enrollment_degrees_awarded_authcheckdam.pdf). (last visited Sept. 8, 2014).

<sup>[2]</sup> 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](http://www.uscourts.gov) (last visited Sept. 8, 2014).

<sup>[3]</sup> 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 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.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/chilids\\_krook\\_2008.pdf](http://krook.wustl.edu/pdf/chilids_krook_2008.pdf) ([http://krook.wustl.edu/pdf/chilids\\_krook\\_2008.pdf](http://krook.wustl.edu/pdf/chilids_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] (#\_ednref4) NWLC calculations are based on data from the Biographical Directory of Judges, *supra* note 2.

[5] (#\_ednref5) NWLC calculations are based on data from the Biographical Directory of Judges. *See id.*

[6] (#\_ednref6) These include the Middle District of Alabama, the Middle District of Georgia, the District of Idaho, 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. NWLC calculations based on data from the Biographical Directory of Judges, *supra*. A female nominee to the Eastern District of Wisconsin is pending. *See* [www.uscourts.gov](http://www.uscourts.gov) (<http://www.uscourts.gov>).

[7] (#\_ednref7) NWLC calculations are based on data from the Biographical Directory of Judges, *supra* note 2.

[8] (#\_ednref7) NWLC calculations are based on data from the Biographical Directory of Judge, *supra* note 2.

[9] (#\_ednref8) Alliance for Justice, *Judicial Selection Snapshot 6*, (Sept. 8, 2014) (on file with NWLC).

[10] (#\_ednref9) *Id.*

[11] (#\_edn9) Alliance for Justice, Making History: President Obama's Female Judicial Nominees, <http://www.afi.org/judicial-selection/president-obama-female-firsts.pdf> (<http://www.afi.org/judicial-selection/president-obama-female-firsts.pdf>) (last visited July 29, 2014); NWLC calculations based on data from the Biographical Directory of Judges, *supra* note 2.  
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