



A FAIRER COURT:

*How President Biden
and Congress Raised
the Bar in 2021*



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A. Foreward

In September 2021, Alliance for Justice's founder Nan Aron stepped down after 42 years of unparalleled determination and visionary leadership. Nan envisioned a future with a justice system that works for every American, not just those with wealth, power, or privilege, and a vibrant advocacy community that works to uphold and advance the rights of all. As we look forward to a new year and continue under the distinguished leadership of Rakim Brooks, Alliance for Justice (AFJ) remains committed to the essential work of prioritizing the courts in the public consciousness. Nan wrote an open letter on her last day as AFJ's President and ended with a proverb that will continue to inform our judicial nominations work in the years to come: "You are not obligated to complete the work, but neither are you free to desist from it." Courts matter and the work continues.

B. Executive Summary

Federal courts and the judges who serve on them are essential to the protection of our most important constitutional rights. Federal judges have lifetime tenure; their impact on the lives of the American people is felt long after the presidents who nominated them, and the senators who have recommended them, have left office. The judiciary is often the last defense for Americans' civil rights and liberties, including reproductive rights, health care, equal opportunity in the workplace and education, and due process under the law. The federal judiciary also has an enormous impact on millions of Americans' lives through its application of laws surrounding corporate accountability, clean air and clean water standards, and more.

Unfortunately, the federal judiciary does not reflect the diversity of our country or the legal profession. Most federal judges are white, male, and straight. Both Democratic and Republican presidents have consistently nominated attorneys whose careers were devoted to representing the rich and powerful. From 2016 to 2020, President Trump and Senate Republicans made this imbalance dramatically worse. For four years, Trump and his Republican allies in the Senate **confirmed** hundreds of predominantly white, male, and too often unqualified federal judges with long records of undermining constitutional rights and legal protections. Since being confirmed, these Trump judges have used their power to undermine the civil rights and legal protections of people of color, women, LGBTQ+ Americans, persons with disabilities, and immigrants. They have also repeatedly sided with the wealthy and powerful, while ruling against important environmental protections and the economic rights of workers and consumers.

Given these circumstances, it was crucial for the Biden administration to immediately prioritize the appointment of diverse and highly qualified judges with demonstrated commitments to equal justice. These judges will play a crucial role in preserving the rule of law, promoting equal justice, and protecting Americans' constitutional rights and critical legal protections.

This report, issued at the end of the first session of the 117th Congress, examines the significant progress the Biden administration has already made to repair our federal judiciary. The Senate confirmed more of President Biden's lower court judges (40) in his first year in office than any president since Ronald Reagan (40).

What's remarkable, though, is not just how fast the Biden administration and Senate Democrats are moving, but who is getting confirmed. Biden's judges have been more diverse, both in lived experience and professional background, than any previous presidential administration. Additionally, Biden's eminently qualified nominees have a demonstrated commitment to equal justice under the law. This report details the tremendous progress the Biden administration has made in nominating people who have historically been excluded from the federal bench — women, people of color, LGBTQ+ people, and others — and the historic emphasis on nominating women of color to our federal courts. Nearly 75% of President Biden's nominees have been women and nearly 65% are people of color. His nominees also include many historic firsts, such as: the **first Muslim-American** federal judge, the **first openly LGBTQ+ woman** to serve on any federal circuit court, the **first Black woman** to serve on the Ninth Circuit from California, the **first Korean-American woman** to serve as a federal appellate judge, and the **first Latinx district court judge** in Ohio.

We also outline the administration's demonstrated commitment to professional diversity. Prior to the Biden administration, both Democratic and Republican presidents alike chose judges with career backgrounds predominantly in prosecution and corporate law. In contrast, President Biden's nominees have included civil rights lawyers, labor lawyers, plaintiff's lawyers, consumer protection lawyers, and public defenders. President Biden has appointed 5 circuit court judges alone with experience as public defenders, doubling the number of former public defenders on the appeals courts.

AFJ applauds the Biden administration and Senate Democrats for prioritizing a fair and independent judiciary that reflects the diversity of the nation. Going forward, President Biden and Senate Democrats must continue building on their established track record of success by pushing for an even wider range of nominees to address longstanding gaps in demographic representation and legal experience in our federal courts, such as the need for more Latinx judges, judges with disabilities, and environmental and labor lawyers.

C. Introduction

1. The Severe Lack of Demographic and Professional Diversity on the Federal Bench

The federal judiciary was exclusively white and male until the mid-twentieth century, and federal judges are still disproportionately white, male, straight, and economically privileged. Federal judges also overwhelmingly have professional backgrounds representing others in positions of power. As of 2020, **73%** of federal judges were male, **80%** were white, and less than **1%** identified as LGBTQ+. These numbers operate in stark contrast to an American public that is **51%** female, **60%** white, and **5.6%** LGBTQ+.

Federal judges also overwhelmingly have professional backgrounds representing others in positions of power. Prior to the Biden administration, **65%** of judges spent the majority of their careers in private practice. On the appellate bench, former prosecutors **outnumbered** former public defenders four to one. Additionally, as of 2020, only **three active appellate judges** had dedicated their careers to public defense. After Justice Ruth Bader Ginsburg died in 2020, a civil rights trailblazer who co-launched the ACLU Women's Rights Project, **no** appellate judges had spent the majority of their careers in non-profit civil rights organizations.

Far too often, a homogenous group of judges make critical decisions while groups that are underrepresented on the judiciary — people of color, working class people, women, persons with disabilities, and LGBTQ+ Americans — bear the brunt of their decisions and see hard-fought rights taken away. The homogenous nature of the current federal bench, and the narrow viewpoints espoused in decision-making, raises serious alarms about the legitimacy of the federal judiciary.

2. Trump's Impact on our Courts

President Trump's time in the White House further entrenched the federal courts as a place for the rich and powerful. After years of obstructing President Obama's nominees, Senate Republicans dismantled Senate rules and undermined norms to confirm **231** largely conservative judges to lifetime seats on the federal courts, or more than one quarter of all active federal judges. This includes confirming 54 judges to powerful circuit court seats, one short of the 55 President Obama appointed over two terms in office.

Republicans blocked President Obama from confirming a Supreme Court justice with nearly a year left in his term, only to push Amy Coney Barrett's nomination through in the waning days of the Trump administration. Trump appointed a total of three justices to the nation's highest court, ensuring a 6-3 conservative majority on the Supreme Court for the foreseeable future.

Trump's **judges** were overwhelmingly white (83%) and male (76%), and **eight** nominees were rated "Not Qualified" by the American Bar Association (ABA). Judicial nominees rated "Not Qualified" are found lacking in either their character, professional competence, or judicial temperament. By contrast, none of President Biden's nominees have received this rating.

As Alliance for Justice predicted, **Trump-appointed justices** have rolled back hard-won rights and legal protections critical to millions of people, while expanding the power of corporations and the wealthy. For example, in *Brnovich v. DNC*, Justices Gorsuch, Kavanaugh, and Barrett joined a majority of the Court to gut the Voting Rights Act. In *Whole Woman's Health v. Jackson*, the three Trump justices allowed a Texas law banning abortions after six weeks to remain in place in an unsigned, one-paragraph "shadow docket" order. Although the Supreme Court has always had an Orders docket, in recent years it has increasingly emerged as a channel for the Court to rule on pressing, controversial legal issues in the dead of night, leading to the aforementioned nickname of the "shadow docket."

3. Progressive Galvanization During the Trump Era

During the Trump administration, progressives, including AFJ, fought Donald Trump's takeover of our federal courts. Millions rallied, called their senators, and petitioned in opposition to egregious nominees. According to multiple polls, in 2020, those who said the appointment of judges was important to their vote were much more likely to vote for Biden than Trump.

After the 2020 election, AFJ **led** over 70 groups in demanding that the Biden administration prioritize the courts on day one. Through our **Building the Bench** program, working with our coalition partners, we continue to identify the broadest possible pool of demographically and experientially diverse lawyers with a demonstrated commitment to equal justice under the law. Building the Bench was a natural outgrowth of **Broadening the Bench: Professional Diversity and Judicial Nominations**, a report AFJ published in 2014 on the need for greater professional diversity in a federal judiciary composed largely of jurists who spent most of their legal careers in private practice or as prosecutors.

In response to unprecedented progressive mobilization, the Biden administration made judicial nominations a priority even before Inauguration Day. In December 2020, incoming White House Counsel Dana Remus sent a [letter](#) to Democratic senators to get their judicial recommendations to the transition team before the President was sworn in. The letter signaled the administration's strong commitment to ensuring demographic and experiential diversity on the federal judiciary and informed senators that the White House was "focused on nominating individuals whose legal experiences have been historically underrepresented on the federal bench."

Since then, the President and Senate Democrats have named public defenders, civil rights lawyers, legal aid attorneys, and "those who represent Americans in every walk of life" as historically underrepresented groups on the federal bench.

As of December 2021, the Biden administration and Senate Democrats have delivered on this promise.

4. The First Year of the Biden Administration

In his first year in office, President Biden and Senate Democrats have taken important steps to repair the immense damage done to the independence of our federal judiciary by nominating 71 exceptional candidates and confirming 40 judges to lifetime seats on the bench.

A truly diverse judiciary is one that reflects the gender, racial, ethnic, sexual orientation, disability status, and religious diversity of the nation, and is comprised of judges who have been advocates for clients across the socio-economic spectrum. With this in mind, 52 of President Biden's nominees, or nearly 75 percent of all those nominated, are women, and 46 of President Biden's nominees, or nearly 65 percent of all those nominated, are people of color. The professional backgrounds of President Biden's nominees are also fundamentally different from previous administrations, as he has nominated 21 public defenders, 14 civil rights attorneys, 10 plaintiff-side lawyers, and many more underrepresented jurists who will enhance the quality of judicial decision-making on our courts for years to come.

Despite a razor-thin majority in the U.S. Senate, and near total obstruction from their Republican colleagues, Senate Majority Leader Chuck Schumer, Senate Judiciary Committee Chairman Dick Durbin, and the entire Democratic caucus have been able to confirm a record number of nominees to the federal bench.

Democratic senators should also be lauded for recommending historic candidates to the White House, as well as their unity in supporting the President's nominations: no Democratic senator has voted against any judicial nominee.

By contrast, Republican senators have been vigorous in their opposition to President Biden's judicial nominees. This is despite the nominees' eminent qualifications and the fact that each has received at least a **qualified rating** from the American Bar Association. Republican opposition to President Biden's qualified judicial nominees has been historic, with 55% of judicial nominees opposed by at least 40 Republican Senators. For instance, Fourth Circuit Judge Toby Heytens received support from only four Republican senators despite a unanimous well qualified rating from the ABA, an uncontroversial position as Virginia's Solicitor General, and zero criticism from senators during his confirmation hearing.

Republican senators have also nearly unanimously opposed the confirmation of career public defenders, like now-Circuit Court Judge Eunice Lee, public servants who fulfill the Constitution's guarantee of representation for criminal defendants.

In addition to voting against eminently qualified candidates, Republican Senators have also made several disturbing and inappropriate comments, particularly to women of color, during judiciary committee hearings. For instance, Senator John Kennedy of Louisiana interrupted Ninth Circuit nominee Jennifer Sung 23 times in a six-and-a-half-minute questioning period and had to be reprimanded twice by the Committee Chair and fellow senators for his behavior towards Sung and other women nominees.

With the Democrats' tenuous Senate majority, and the Republican caucus' demonstrated obstruction of judicial nominations, AFJ urges the Biden administration and Senate Democrats to fill every judicial vacancy next year.

D. Biden's Judicial Nominations: By The Numbers

President Biden and Senate Democrats are setting the standard for modern presidential administrations in quickly and efficiently nominating and confirming federal judges. In the first year of his administration, President Biden nominated 71 nominees to district courts and circuit courts. Senate Democrats have moved swiftly to confirm **40 judges** to lifetime seats, which represents the most federal judges confirmed by any president in their first year since Ronald Reagan.

Judges Confirmed in the First Year of Recent Presidencies

President	Supreme Court	Circuit Court	District Court	Total Judges
Biden (2021)	0	11	29	40
Trump (2017)	1 (Gorsuch)	12	6	19
Obama (2009)	1 (Sotomayor)	3	9	13
W. Bush (2001)	0	6	22	28
Clinton (1993)	1 (Ginsburg)	3	24	28
H.W. Bush (1989)	0	5	10	15
Reagan (1981)	1 (O'Connor)	8	32	41

Looking Forward

There are currently over 100 **vacancies** on district courts and circuit courts. In 2021, the Biden administration has primarily focused on nominating judges in states with two Democratic Senators. President Biden has put forward 31 nominees for these seats, and many additional nominees are expected early in 2022. Many of these remaining judicial vacancies lie in states with at least one or multiple Republican Senators, which may present procedural hurdles for the Biden administration in 2022. Of these hurdles, the Senate's current rules on district court nominations and confirmations could be the biggest challenge President Biden will need to overcome.

Senate Republicans can use the “blue slip” process to obstruct confirmation of district court nominees by withholding their consent to any nominee from their respective states. It is unclear whether Senate Republicans will abuse this process to needlessly obstruct the filling of urgently needed vacancies, or if they will work in good faith with President Biden and Senate Democrats to fill them. Senate Democrats consistently returned blue slips for Trump nominees.

It is also unclear if the Republican caucus will agree to support nominees that members of their own party have signed off on. For instance, President Biden has nominated three attorneys for judgeships in the state of Ohio, after consulting Republican Senator Rob Portman. Despite the support of Senator Portman, Republicans in committee were largely opposed to these consensus nominees.

E. Circuit Courts

1. The Severe Lack of Demographic and Professional Diversity on the Federal Bench

Every year, the [Supreme Court](#) is asked to review more than 7,000 cases, yet it only [decides](#) about 100 to 150 cases. That means that the nation's 13 federal appeals courts – the circuit courts – have the final word on most legal appeals around the country. Trump had a major impact on these courts in his four years in office, appointing [54 federal appellate judges](#), just one short of the 55 that President Obama appointed in eight years. Trump also “flipped” the balance of several circuit courts from a majority of Democratic appointees to a majority of Republican appointees.

In his first year in office, President Biden nominated 16 eminently qualified individuals to these life-tenured positions, and the Senate confirmed 11 circuit court judges. 7 of the 13 circuit courts now contain a majority of Democratic-appointed judges. Notably, in just one year President Biden has doubled the number of Black women judges on the circuit courts. The first four circuit court judges confirmed this year were Black women. By contrast, Trump named zero Black judges to the circuit courts in four years.

Highlights

1st Circuit:

Gustavo Gelpí (PR) is the first former public defender ever to serve on the U.S. Court of Appeals for the First Circuit. He is also the second judge of Hispanic origin to ever serve on the First Circuit and the only current Hispanic judge on the court.

2nd Circuit:

With the confirmations of Myrna Pérez (NY), Eunice Lee (NY), and Beth Robinson (VT) to the U.S. Court of Appeals for the Second Circuit, President Biden flipped the Second Circuit to a majority Democratic-appointed court. Lee is a former public defender, Pérez a voting rights expert, and Robinson a LGBTQ+ trailblazer. If Alison Nathan (NY) is confirmed, she and Robinson will be the first and second openly lesbian judges on a circuit court.

4th Circuit:

Toby Heytens (VA) brings extensive legal experience to the bench, including as Virginia's Solicitor General, a professor of law at the University of Virginia, and an Assistant to the Solicitor General at the U.S. Department of Justice.

7th Circuit:

Candace Jackson-Akiwumi (IL) became only the second Black judge to ever serve on the U.S. Court of Appeals for the Seventh Circuit and the only non-white active judge on the court. She is also a former public defender.

9th Circuit:

Lucy Koh (CA) is the first Korean-American to serve as a federal appellate judge. Jennifer Sung (OR) has spent her career tirelessly advocating for the rights of workers as a union organizer and attorney, and upon her confirmation, became the first Asian American judge from Oregon on the Ninth Circuit. Two additional nominees received cloture votes and are expected to be confirmed in early 2022. Gabriel Sanchez (CA) has had a distinguished career in private practice and state government and will bring critical demographic diversity to the Ninth Circuit, the largest federal court in the country and one serving a large Latino population. Holly Thomas (CA) has spent her career advancing the cause of civil rights and will become the first Black woman to ever sit on the Ninth Circuit in California.

10th Circuit:

Veronica Rossman (CO) is an immigrant who fled antisemitism in the Soviet Union and is the only judge with experience as a federal defender serving on the U.S. Court of Appeals for the Tenth Circuit.

D.C. Circuit:

Ketanji Brown Jackson is only the third Black woman to ever serve on the U.S. Court of Appeals for the D.C. Circuit and is a former public defender.

Federal Circuit:

Tiffany Cunningham is the first Black judge on the U.S. Court of Appeals for the Federal Circuit.

Looking Forward

- There are 21 **current vacancies** on circuit courts and 5 pending nominees to those seats.
- President Biden has the opportunity to “flip” the balance of the Third Circuit from a majority of Republican appointees, with three current vacancies to fill.

Circuit Breakdown

Circuit	Number of Active Judges Appointed by President Biden	Number of Active Judges Appointed by President Trump	Number of Active Judges Appointed by Democratic Presidents	Number of Active Judges Appointed by Republican Presidents	Number of Current Vacancies
1st Circuit (ME, MA, NH, PR, RI)	1: Gustavo Gelpí	0	5 (83.3%)	1 (16.7%)	1
2nd Circuit (CT, NY, VT)	3: Eunice Lee Beth Robinson Myrna Pérez	5	7 (53.8%)	6 (46.2%)	3
3rd Circuit (DE, NJ, PA)	0	4	6 (42.9%)	8 (57.1%)	3
4th Circuit (MD, NC, SC, VA, WV)	1: Toby Heytens	3	9 (60%)	6 (40%)	2
5th Circuit (LA, MS, TX)	0	6	5 (29.4%)	12 (70.6%)	1
6th Circuit (KY, MI, OH, TN)	0	6	5 (31.3%)	11 (68.7%)	3
7th Circuit (IL, IN, WI)	1: Candace Jackson-Akiwumi	4	3 (27.3%)	8 (72.7%)	2
8th Circuit (AR, IA, MN, MO, NE, ND, SD)	0	4	1 (9.1%)	10 (90.9%)	0
9th Circuit (AK, AZ, CA, HI, MT, NV, OR, WA)	2: Lucy Koh Jennifer Sung	10	16 (55.2%)	13 (44.8%)	2
10th Circuit (CO, KS, NM, OK, UT, WY)	1: Veronica Rossman	2	6 (54.5%)	5 (45.5%)	1
11th Circuit (AL, FL, GA)	0	6	5 (41.7%)	7 (58.3%)	1
D.C. Circuit	1: Ketanji Brown Jackson	3	7 (63.6%)	4 (36.4%)	1
Federal Circuit	1: Tiffany Cunningham	0	8 (66.7%)	4 (33.3%)	1

F. District Courts

Our district court judges are the gatekeepers of the federal court system. District court judges have the highest volume of cases of any federal judges. The vast **majority** of the time, their decisions are the federal judicial system's final say. They are the crucial **fact-finders**. In criminal cases, they are responsible for ensuring constitutional rights are upheld and they have the power to take away an individual's liberty.

President Trump confirmed district court judges at a faster pace than Presidents Obama, George W. Bush, or Clinton. By the end of his presidency, Trump's appointees made up **27%** of all district court judges.

In his first year in office, President Biden nominated 55 exceptional individuals to serve on district courts, with 29 of these judges confirmed by the Senate. Three-quarters of these nominees are women and 42%, or 23, are women of color. At this point in Trump's presidency, he had only nominated one woman of color to the district courts. More than half of Biden's nominees are professionally diverse, with backgrounds as public defenders, civil rights attorneys, and labor and employment advocates.

Highlights of Confirmed Judges

Jia M. Cobb (D. D.C.)

Cobb is the **second Black woman** actively serving on the U.S. District Court for the District of D.C., and a former public defender and civil rights lawyer.

David Estudillo (W.D. Wash.)

Estudillo is the **second Latino judge** to ever serve on the U.S. District Court for the Western District of Washington. He is a former plaintiff-side and immigration lawyer.

Maame Maame Ewusi-Mensah Frimpong (C.D. Cal.)

The **only active Black woman district court judge** in any of California's four federal district courts.

Patricia Tolliver Giles (E.D. Va.)

Giles is the **second woman of color** to ever serve on the federal bench in Virginia.

Lydia Griggsby (D. Md.)

Griggsby is the **first woman of color** to ever serve as a federal judge for the District of Maryland. Judge Griggsby identifies as Black and Native American.

Angel Kelley (D. Mass.)

Kelley is the second Black woman judge and **second Asian American judge** to serve on the U.S. District Court for the District of Massachusetts. She is a former Legal Aid lawyer.

Lauren J. King (W.D. Wash.)

King is the **first Native American federal judge** in Washington State history, and only the fourth Native American actively serving on the federal bench.

Shalina D. Kumar (E.D. Mich.)

The **first federal judge of South Asian descent** in Michigan.

Tana Lin (W.D. Wash.)

Lin is the **first AAPI person** to ever serve on the U.S. District Court for the Western District of Washington. She is a former public defender and civil rights lawyer.

Michael Nachmanoff (E.D. Va.)

Nachmanoff is the **third public defender** to ever serve on the U.S. District Court for the Eastern District of Virginia.

Sarala Vidya Nagala (D. Conn.)

Nagala is the **first judge of South Asian descent** to serve on the U.S. District Court for the District of Connecticut.

Florence Pan (D. D.C.)

Pan is the **first AAPI woman** to ever serve on the U.S. District Court for the District of D.C.

Zahid N. Quraishi (D. N.J.)

Quraishi is the **first Muslim American federal judge** in U.S. history.

Margaret Strickland (D. N.M.)

Prior to her confirmation to the U.S. District Court for the District of New Mexico, Strickland worked as a public defender and a prominent civil rights attorney.

Highlights of Nominated Judges

Victoria Calvert (N.D. Ga.)

Calvert will be the **first public defender** to serve as a district court judge in Georgia and the second Black woman to serve on the Atlanta-based Northern District of Georgia.

Jessica Clarke (S.D. N.Y.)

Clarke is currently the Chief of the Civil Rights Bureau at the New York State Office of the Attorney General and worked on housing discrimination in the Department of Justice's Civil Rights Division.

Charles Fleming (N.D. Oh.)

Fleming would be the **only judge on the Northern District of Ohio** with experience as a public defender and the court's second active Black judge.

Sarah Geraghty (N.D. Ga.)

Geraghty has spent the last 18 years with the Southern Center for Human Rights and will be one of the few judges in the entire country to have experience as a civil rights attorney.

Dale Ho (S.D. N.Y.)

Ho is one of the nation's premier voting rights advocates and has led the ACLU's Voting Rights Project since 2013. Mr. Ho would also be the **only active AAPI man** on the Southern District of New York, one of the most racially diverse districts in the country covering Manhattan, the Bronx, and the northern suburbs of New York City.

Nina Morrison (S.D. N.Y.)

Morrison is the Senior Litigation Counsel and former Executive Director of the Innocence Project, where she has worked to exonerate 30 wrongfully convicted persons.

Charlotte Sweeney (D. Co.)

Sweeney would be the first openly lesbian federal judge in **any state west of the Mississippi** and brings experience as a plaintiff-side employment lawyer.

Sunshine Suzanne Sykes (C.D. Ca.)

Sykes will be the **first Article III Judge from the Navajo Nation** and previously worked as a staff attorney for California Indian Legal Services.

Hernán Vera (C.D. Ca.)

Vera is the former President and CEO of Public Counsel, the largest pro bono public interest law firm in the nation, as well as a former staff attorney with the Mexican American Legal Defense and Education Fund (MALDEF).

Looking Forward

- There are over 80 **current vacancies** on district courts and 26 pending nominees to those seats.

G. Demographic Diversity

In the first year of his administration, President Biden has made good on his **promise** to appoint “federal judges who look like America” and who are “committed to the rule of law, understand the importance of individual civil rights and civil liberties in a democratic society, and respect foundational precedents like *Brown v. Board of Education* and *Roe v. Wade*.”

For most of our nation’s history, the federal judiciary was exclusively white and male. The first Black Article III judge was **William Hastie**, who was confirmed to the U.S. District Court for the Virgin Islands after working in the Roosevelt administration on civil rights issues. Hastie also went on to be the first person of color appointed to the Court of Appeals in 1949. Other “**firsts**” for judges of color came in 1961 (Reynaldo Guerra Garza, the first Latinx federal judge), 1971 (Herbert Choy, the first Asian American federal judge), and 1994 (Billy Michael Burrage, the first Native American federal judge). **Florence Allen** became the first female judge when she was appointed to the Court of Appeals for the Sixth Circuit in 1934, but a woman of color was not appointed to the federal bench until 1966, when civil rights leader Constance Baker Motley was confirmed. **Judge Deborah A. Batts**, a Black woman and the first openly LGBTQ+ federal judge, was not appointed until 1994.

While these trailblazers led the way, the overall percentage of judges of color and women remained incredibly low for decades to come. In 1980, only **9%** of federal judges were persons of color, compared with **20%** of the country, and only 5% of federal judges were women, who made up **51%** of the population. These numbers **slowly** improved through the Clinton, W. Bush, and Obama presidencies, before flatlining, and in some instances declining, with the Trump administration.

President Biden has prioritized the nomination of people who have been historically excluded from the federal bench, including women, people of color, LGBTQ+ people, and other underrepresented groups. Particularly striking has been Biden’s nomination of women of color, notably Black women – a demographic group that is widely subject to multiple forms of discrimination, including racism and sexism.

Importantly, diversity is not limited to race and gender. Many identities and lived experiences are sorely underrepresented on the federal bench.

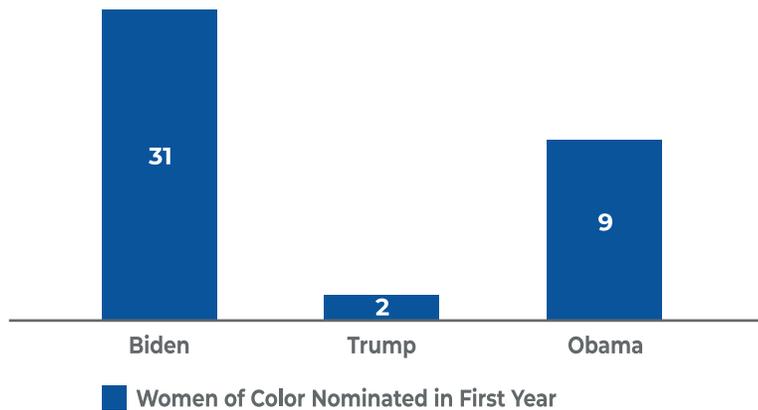
Women of Color

- Prior to Biden’s presidency, women of color made up **20%** of the U.S. population but only **4%** of sitting federal judges.
- 31 of President Biden’s nominees — almost half of all nominees, and more than half of all women nominees — are women of color.

These Nominees Include:

- 15 Black women (21.1% of all nominees)
 - 10 AAPI women (14.1%)
 - 6 Hispanic or Latina women (8.4%)
 - 3 Native American women (4.2%)
- Biden’s first four confirmations to the courts of appeal were Black women, who now make up almost a quarter of total nominees. Prior to Biden’s Presidency, only eight Black women had ever served on U.S. courts of appeals.

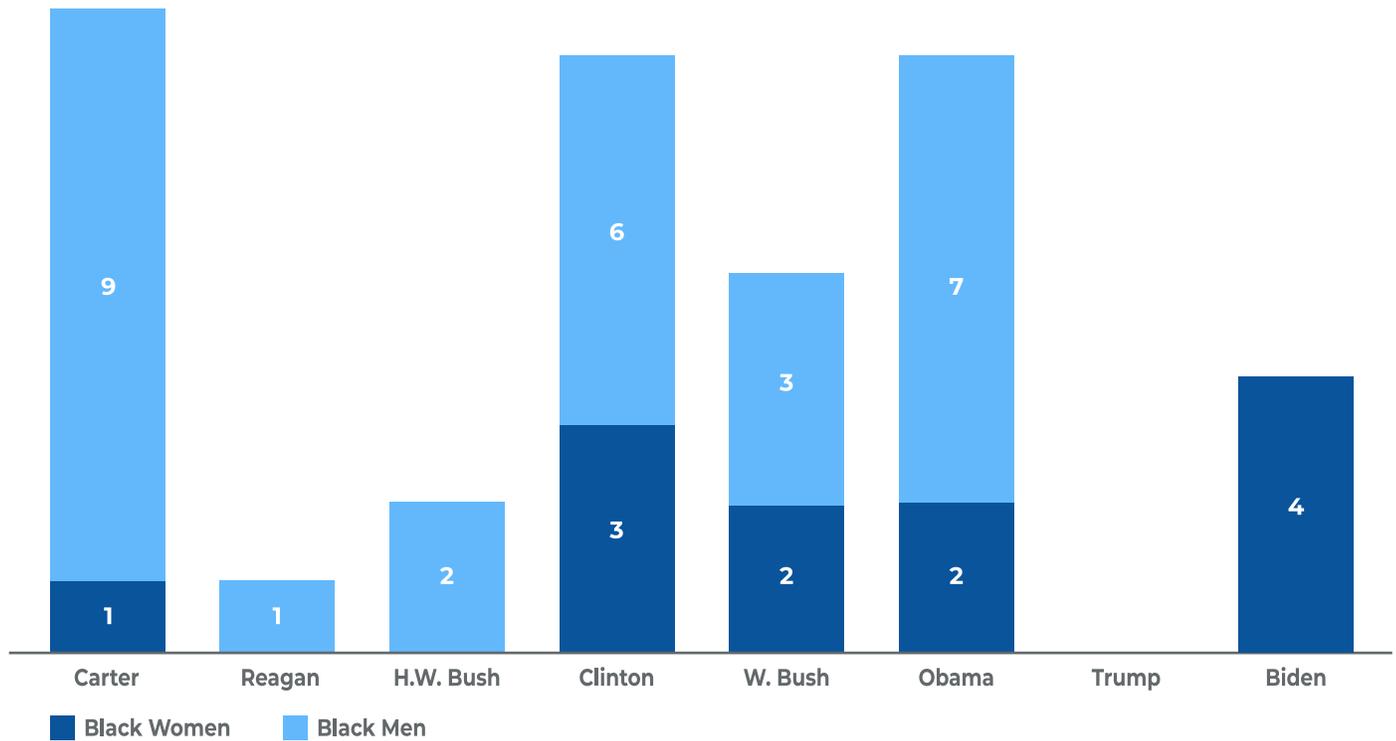
Women of Color Nominated in First Year



Nominee Spotlight: Judge Ketanji Brown Jackson

Before she was confirmed to the U.S. Court of Appeals for the D.C. Circuit, Judge Ketanji Brown Jackson served on the U.S. District Court for the District of Columbia. Born in D.C., Judge Jackson’s extraordinary career included working as a federal defender, serving on the U.S. Sentencing Commission, and clerking for U.S. Supreme Court Justice Stephen Breyer. During her eight years on the District Court, Judge Jackson demonstrated a commitment to equal justice through her decisions on police misconduct, disability rights, and immigration.

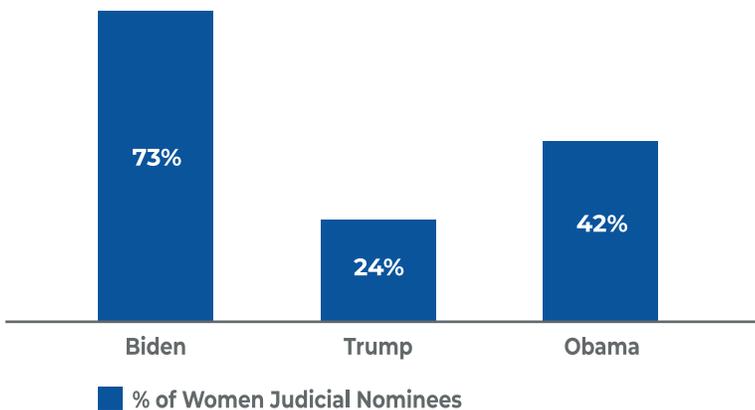
Black Circuit Court Judges By President



Gender Diversity

- Prior to Biden's presidency, women made up **51%** of the U.S. population but only **27%** of sitting federal judges.
- 52 of President Biden's nominees are women (73.2%), far exceeding the percentage of women appointed by his two predecessors.

% of Women Judicial Nominees



Nominee Spotlight: Judge Lauren King

Judge Lauren King, confirmed to the U.S. District Court for the Western District of Washington, is the first Native American federal judge in Washington state's history and the fourth Native American federal judge in the entire country. A citizen of Muscogee (Creek) Nation in Oklahoma, Judge King chaired her firm's Native American practice group and served as an appellate judge for the Northwest Intertribal Court System.

Nominee Spotlight: Judge Jinsook Ohta

Judge Ohta is the first AAPI female judge on the U.S. District Court for the Southern District of California and has dedicated her career to consumer protection work. From 2011 to 2021, Judge Ohta worked in the Consumer Protection Section of the California Attorney General's Office. In one case, Judge Ohta negotiated a \$90 million judgment against GlaxoSmithKline for their marketing of diabetes medicine that interacted dangerously with insulin and increased patients' risks of heart attack and stroke.

Racial Diversity

- 46 of President Biden's nominees are people of color (64.8%), far exceeding the percentage of people of color appointed by his two predecessors.

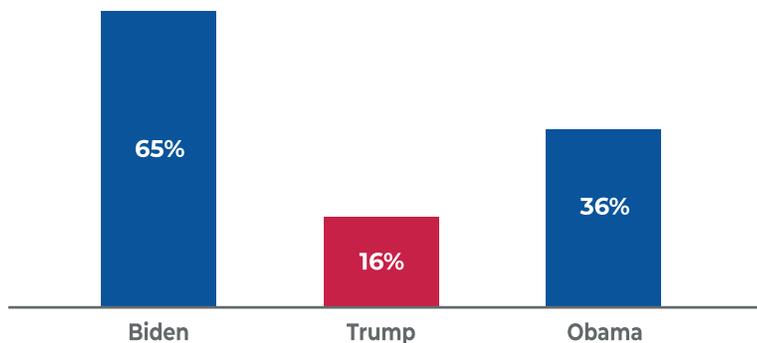
These Nominees Include:

- 20 nominees who are Black (28.2% of all nominees)
- 14 nominees who are Hispanic or Latinx (19.7%)
- 13 nominees who are AAPI (18.3%)
- 3 nominees who are Native American (4.2%)

Nominee Spotlight: *Judge Candace Jackson-Akiwumi*

Judge Candace Jackson-Akiwumi, confirmed to the U.S. Court of Appeals for the Seventh Circuit, is the only person of color on that court and, at the time of her confirmation, only the third federal appellate judge who was a career public defender. During her 10 years as a public defender in Chicago, she represented over 400 clients, including many before the Seventh Circuit where she is now a judge.

% of People of Color Judicial Nominees



Other Demographic Diversity

The first openly LGBTQ+ federal judge, [Deborah Batts](#), was not confirmed until 1994, and LGBTQ+ identifying judges remain incredibly rare. While millions of Americans live with disabilities, there is very limited public information about judges who are persons with disabilities. One known judge who identifies as a person with a disability, Judge David Tatel, of the U.S. Circuit Court of Appeals for the D.C. Circuit, who is blind, is taking senior status. Buddhist, Hindu, [Muslim](#), and atheist judges are also underrepresented.

President Biden should also be commended for the following nominations:

- 5 nominees are openly LGBTQ+ (7%)
- 1 nominee, Judge Zahid Quraishi, is Muslim (1.4%)

Looking Forward

Building on their existing progress, President Biden and Senate Democrats must continue to push for a wider range of nominees.

- People with working class backgrounds are underrepresented on the bench, based on data showing that judges largely come from elite law schools where most students are affluent. More data must be collected about the socioeconomic background of judges to understand this issue more thoroughly, and more working-class judges should be confirmed.
- Latinx judges are particularly underrepresented on the federal bench. As of 2020, there were **92** Latinx active Article III judges (approximately 7%). By comparison, the U.S. population is **18.5%** Latinx.
- There were **12** openly LGBTQ+ federal judges (less than 1%). By comparison, **5.6%** of Americans openly identify as LGBTQ+.
- Up to this point, President Biden has not nominated any persons with disabilities to the federal courts.

H. Professional Diversity

In addition to demographic diversity, judges should come from a range of professional backgrounds, including public interest lawyers, civil rights lawyers, labor lawyers, plaintiff’s lawyers, and public defenders. Few judges have followed in the pioneering footsteps of Thurgood Marshall and Ruth Bader Ginsburg as civil rights attorneys, and few have experiences representing labor unions and employees. As AFJ wrote in its 2014 [report](#) about professional diversity in the federal judiciary, “when judges come from all corners of the legal profession — and particularly when they’ve worked in the public interest, representing those whose voices are otherwise rarely heard — they are equipped to understand the views of each litigant before them, and to render more informed, thorough decisions.”

Professional diversity firsts are harder to identify, given the data available on judges’ professional backgrounds. [William Hastie](#), the first Black federal judge who was appointed in 1937, also may have been the first civil rights lawyer on the federal bench; in the 30s, Hastie created an organization to protest racial segregation and coordinated with the NAACP to develop legal strategies to attack Jim Crow. The first judge with public defense experience appears to have been [Robert Palmer Anderson](#), who served as a New London public defender before his appointment to the District of Connecticut in 1954. Arthur Goldberg, who served on the Supreme Court from 1962-65 after a distinguished career with United Steelworkers and the AFL-CIO, may have been the first union lawyer on the bench. The first judge with any civil legal services experience may have been [Pierce Lawrence Warren](#), appointed in 1971, who ultimately became one of a small number of Black circuit court judges.¹

In his first year, President Biden has followed through on his pledge to appoint judges who “represent Americans in every walk of life” and are “committed to the rule of law, understand the importance of individual civil rights and civil liberties in a democratic society, and respect foundational precedents like *Brown v. Board of Education* and *Roe v. Wade*.” Particularly striking has been President Biden’s focus on public defenders and civil rights lawyers.

¹: Tracking the history of public defenders and legal aid attorneys is difficult because for most of our nation’s history, the government did not fund legal services for low-income people.

In the first year of his administration, President Biden has prioritized the nomination of experientially diverse lawyers. These nominees include:

- 21 nominees with experience as public defenders (29.6%)
- 14 nominees with experience as civil rights lawyers (19.7%)
- 10 nominees with experience as plaintiff-side lawyers (14.1%)
- 3 nominees with experience as legal services lawyers (4.2%)
- 3 nominees with experience as consumer protection lawyers (4.2%)
- 1 nominee with experience as a labor lawyer (1.4%)

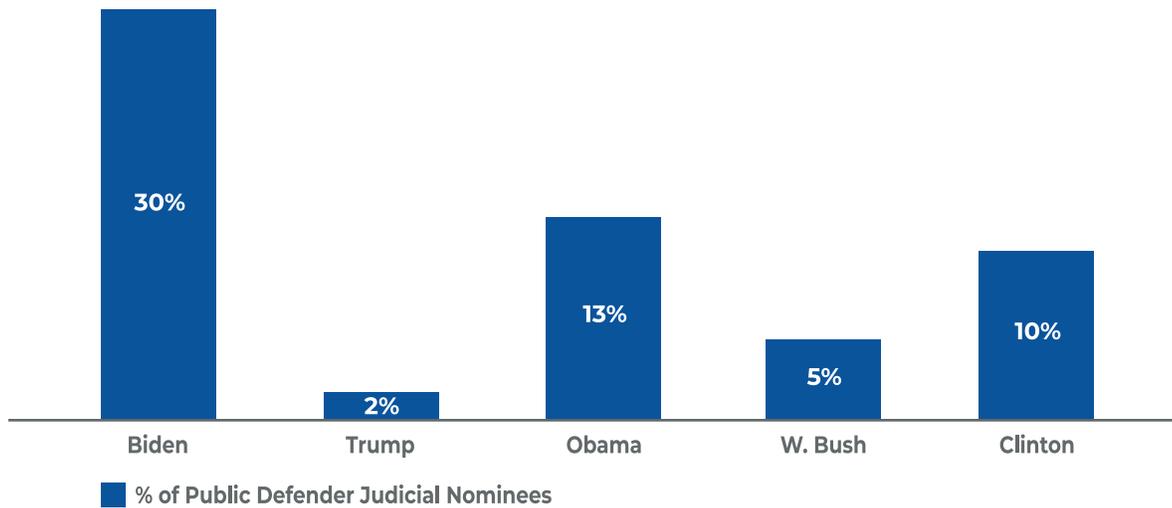
Public Defenders

- President Biden has appointed half of all the active circuit court judges with backgrounds as public defenders—he has named 5, and there are only 10 total.
 - These historic nominations include Circuit Court Judges Ketanji Brown Jackson (D.C. Cir.), Gustavo Gelpi (1st Cir.), Eunice Lee (2nd Cir.), Candace Jackson-Akiwumi (7th Cir.), and Veronica Rossman (10th Cir.). The latter four nominees are the only judges with public defender experience on their respective courts.
- There are now 15 confirmed Biden judges with experience as public defenders. This is more than presidents Trump, Obama, W. Bush, and Clinton confirmed in their first years combined.
 - These nominees include Sarah Merriam, who upon confirmation became the first former public defender to serve in the District of Connecticut since 1964; Margaret Strickland, the former president of the New Mexico Criminal Defense Lawyers Association; and Michael Nachmanoff, the former Chief Federal Public Defender in the Eastern District of Virginia and previously a federal magistrate judge.
- 29.6% of President Biden’s judicial nominees have public defender experience, which is more than any other president.

Nominee Spotlight: Judge Katherine Menendez

Judge Katherine M. Menendez, confirmed to the District of Minnesota, spent two decades as a federal defender prior to her appointment as a U.S. Magistrate Judge. In *United States v. Johnson*, Judge Menendez’s representation took her to the U.S. Supreme Court, which ultimately ruled in favor of Menendez’s client in an 8-1 decision authored by Justice Scalia. Judge Menendez was a leader at her office outside of litigation matters as well, spearheading a project to review cases effected by the revision to the crack cocaine and powder cocaine sentencing laws.

% of Public Defender Judicial Nominees



Civil Rights Lawyers

Former Supreme Court Justices Thurgood Marshall and Ruth Bader Ginsburg are illustrative of why we need civil rights champions on the bench. Civil rights attorneys work to protect the civil rights and liberties of everyday people. Before his confirmation to the Supreme Court, where he was the first-ever African American justice, Thurgood Marshall founded the NAACP Legal Defense and Educational Fund and led its *Brown v. Board of Education* lawsuit, which overturned *Plessy v. Ferguson*'s separate-but-equal standard. After Marshall retired from the Court, Justices Byron White and [Sandra Day O'Connor](#) reflected on how his work in the civil rights movement brought a valuable perspective to the Court's deliberations. Recognizing the important perspective that civil rights lawyers bring to the bench, 16.9% of President Biden's judicial nominees thus far have backgrounds as civil rights lawyers.

Nominee Spotlight: *Judge Holly Thomas*

Judge Holly Thomas will become the first Black woman to serve on the Ninth Circuit from California. Before her nomination, Judge Thomas spent decades as a civil rights litigator. After graduating from Yale Law School, Judge Thomas spent five years at the NAACP Legal Defense and Educational Fund (LDF) focused on education equity, criminal justice, and juvenile justice. For example, in *Williams v. Allen*, Judge Thomas successfully advocated for her client's removal from death row after showing that the prosecution withheld potentially exculpatory evidence and struck prospective jurors because of their race. After leaving LDF, Judge Thomas enforced civil and constitutional rights in government role, first at the U.S. Department of Justice Civil Rights Division and finally at the California Department of Fair Employment and Housing.

Voting Rights Lawyers

The fundamental right to vote is continuously under attack, with state legislatures working to chip away at gains in political participation won through the passage of the 1965 Voting Rights Act. Gerrymandering that dilutes Black voters' political power, "exact match" voter registration that disproportionately harms Latinx voters, and restrictive voter ID laws are just a few of the voter suppression efforts that circulate around the country. The nomination of civil rights lawyers such as Dale Ho, the Director of the ACLU's Voting Rights Project, who has focused his career on protecting the fundamental right to vote for all Americans, regardless of party, and will bring critical experience in election law, is more essential now than ever before.

Nominee Spotlight: Judge Myrna Pérez

On October 25, 2021, Judge Myrna Pérez was confirmed to the U.S. Court of Appeals for the Second Circuit, becoming the only Latina on that court. Before her time on the bench, Judge Pérez was a dedicated civil rights attorney focused on protecting voting rights. After graduating from Columbia Law School and completing two federal clerkships, Judge Pérez began her career at the civil rights firm Relman, Dane & Colfax. Judge Pérez then moved to the Brennan Center's Voting Rights and Election Program, where she spent the majority of her career and most recently served as Director. As Director, she represented Southwest Voter Registration and Education Project in a lawsuit against a Florida law that removed voters from rolls for minor discrepancies in registration records, disproportionately harming Latino voters.

LGBTQ+ Rights Lawyers

According to Lambda Legal, **40%** of Trump's nominees had concrete records of working to undermine LGBTQ+ rights. With continuous attacks on trans youth and LGBTQ+ families, more civil rights advocates who have protected LGBTQ+ people from discrimination and violence are needed on our courts. Colorado nominee Charlotte Sweeney, for example, drafted her state's Equal Pay for Equal Work Act, which prohibits employers from wage discrimination based on an employee's sex (including gender identity).

Nominee Spotlight: Judge Beth Robinson

On November 1, 2021, Judge Beth Robinson was confirmed to the U.S. Court of Appeals for the Second Circuit, becoming the first openly lesbian federal court of appeals judge in the nation's history. Before her federal judicial service, Judge Robinson served on the Vermont Supreme Court and was a trailblazer in advancing marriage equality and LGBTQ+ rights in Vermont. At age 34, Judge Robinson successfully argued *Baker v. Vermont* before the Vermont Supreme Court. The court held that the state must give same-sex couples the same benefits as heterosexual couples, one of the first marriage equality victories in the country. Sworn in as a Vermont Supreme Court Justice in 2011, Judge Robinson demonstrated a commitment to equal justice through decisions on criminal law, employment matters, and the environment.

Workers and Consumers' Rights Lawyers

The Trump administration rolled back protections for workers and consumers. Economic justice lawyers, including union-side labor lawyers and consumer protection lawyers, are vastly underrepresented on the bench. President Biden has nominated economic justice attorneys to the bench whose experience representing working people will inform their decision-making on the bench. Some of these new Judges include Jennifer Sung, a former labor attorney; Jinsook Ohta, who spent a decade defending consumers' rights at the California Attorney General's office; and Jane Beckering, who founded a law firm to represent victims of medical malpractice.

Nominee Spotlight: Judge Jennifer Sung

Judge Jennifer Sung, confirmed to the U.S. Court of Appeals for the Ninth Circuit, has spent her career tirelessly advocating for the rights of workers as a union organizer and attorney. Between college and law school, Judge Sung worked as a union organizer in New York, helping workers win union recognition. After clerking on the Ninth Circuit, Judge Sung worked at the Brennan Center's Economic Justice Project before moving to the west coast to practice labor law. For example, Sung brought a **class action lawsuit** on behalf of 18,000 Pizza Hut servers, cooks, and delivery drivers for the company's failure to provide legally required meal and rest breaks and failure to reimburse work-related expenses. Since 2017, when she was appointed and confirmed by the Oregon Senate, she has served as a Member of the Oregon Employment Relations Board, which adjudicates labor and employment disputes.

Looking Forward

While President Biden and Senate Democrats should be commended for their work to this point, they must continue to push for a wider range of nominees with respect to professional diversity.

- President Biden has only nominated one economic justice lawyer, Jennifer Sung, to a federal appellate court. More economic justice lawyers are needed on the federal circuit courts.
- Environmental justice lawyers are also underrepresented on the federal bench. President Biden has not nominated any environmental justice attorneys and should do so.

I. Conclusion

2021 has been a challenging year for the United States. A year that began with the January 6th insurrection at the U.S. Capitol and a global pandemic, followed by continued economic uncertainty, now ends with COVID-19 cases surging yet again as the winter months unfold. On the judicial front, the Supreme Court continues a trend of troubling decisions that threaten our constitutional rights.

2022 will also prove to be a pivotal year for the federal judiciary. The Supreme Court is slated to decide cases concerning abortion rights, COVID-19, the First Amendment, public education, gun safety, and the very structure of the federal government itself.

Yet in this difficult time, there are reasons to have hope in the future of our judiciary. President Biden and Senate Democrats have prioritized judicial nominations in a way not seen in two generations. More judges have been confirmed in President Biden's first year than any president since Ronald Reagan. At the same time, these nominations have increased the demographic and experiential diversity of the federal courts so that they better resemble both the legal community and the nation. These judges, serving for life, will have a direct impact on the lives of the American people. They will faithfully protect constitutional rights and legal protections, ensure proper application of some of our nation's most important laws, and protect our democracy, consumers, workers, and the environment.

The Biden administration has placed particular emphasis on nominating and confirming Black women and public defenders to the federal judiciary. When President Biden took office on January 20, 2021, only 5 Black women sat on courts of appeals. Today, that number is 9. Similarly, at the beginning of President Biden's term, only 6 circuit court judges had any experience serving as public defenders compared to nearly 60 former prosecutors. Thanks to a concerted effort to nominate public defenders, 15 new judges, including 5 new circuit court judges, now have that valuable experience. In total, President Biden has nominated 21 public defenders to the federal judiciary, 29.6% of all nominees.

While these historic nominees are worthy of celebration, there is still a need to address the lack of professional and demographic diversity on the federal judiciary overall. The Latinx community is vastly underrepresented on the federal judiciary. Only a handful of judges in the nation's history have had a tribal affiliation.

Very few federal judges identify as having a physical, mental, or intellectual disability. While Beth Robinson became the first openly lesbian federal appeals judge upon her confirmation in November, there are only 12 openly LGBTQ+ federal judges serving on the federal judiciary today.

Further, while President Biden has made tremendous strides in nominating public defenders to the federal bench, the rich diversity of the legal profession is still not fully represented in courthouses because the overwhelming majority of federal judges only have experience representing management and corporations. President Biden has nominated no judges with experience as environmental attorneys at a time when the planet is in a dire climate emergency. The only career civil legal aid attorney on the federal circuit courts, Judge Richard Paez, is currently slated to take senior status. Our democratic system and judiciary are legitimized when they reflect the people they serve, and they function best when they have a wealth of lived experiences to draw from. The Biden administration should continue to prioritize both demographic and experiential diversity on the courts in the years to come.

The legal community will continue to watch if Justice Stephen Breyer chooses to retire at the end of the 2021-22 Supreme Court term, potentially handing President Biden his first opportunity to shape the highest court in the land for decades to come. There remain over 100 vacancies on federal circuit courts and district courts. In a closely divided Senate with important midterm elections approaching, the Biden administration and Senate Democrats must continue their aggressive pace and move to fill all judicial vacancies by 2023.