

As the United States increasingly grows more racially and ethnically diverse, diversity within the federal judiciary unfortunately lags far behind. Federal and state courts have historically failed to reflect the racial, ethnic, and gender diversity of the United States. In order to work towards a more equitable and just democracy that is representative of the American public, there is an urgent need for the next President to appoint more Black judges, judges of color, women judges, and judges from other underrepresented backgrounds to ensure the federal bench is reflective of the population and to increase public trust and accountability in the judiciary. According to the Census, around 40 percent of the U.S. population consists of people of color (Figure 1).

Background

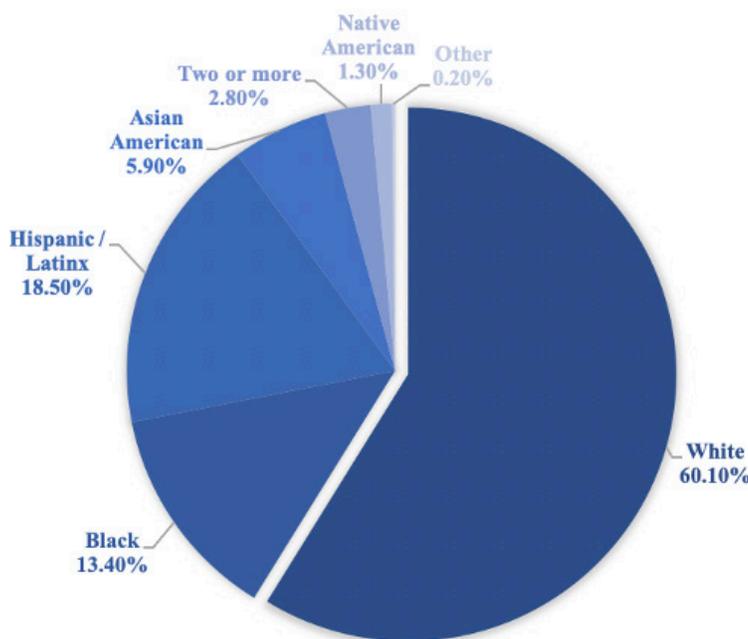
However, only around 26.5 percent of active judges in Article III courts are judges of color (Figure 2). The same disparities hold true for gender. Around half of the people in the United States are women, yet they only make up around 33 percent of active judges in Article III courts.ⁱ

The lack of diversity extends beyond the federal judicial courts. The same trends are present at the state level, where only 15.5 percent of judges, as of February 2020, on state supreme courts are people of color.ⁱⁱ

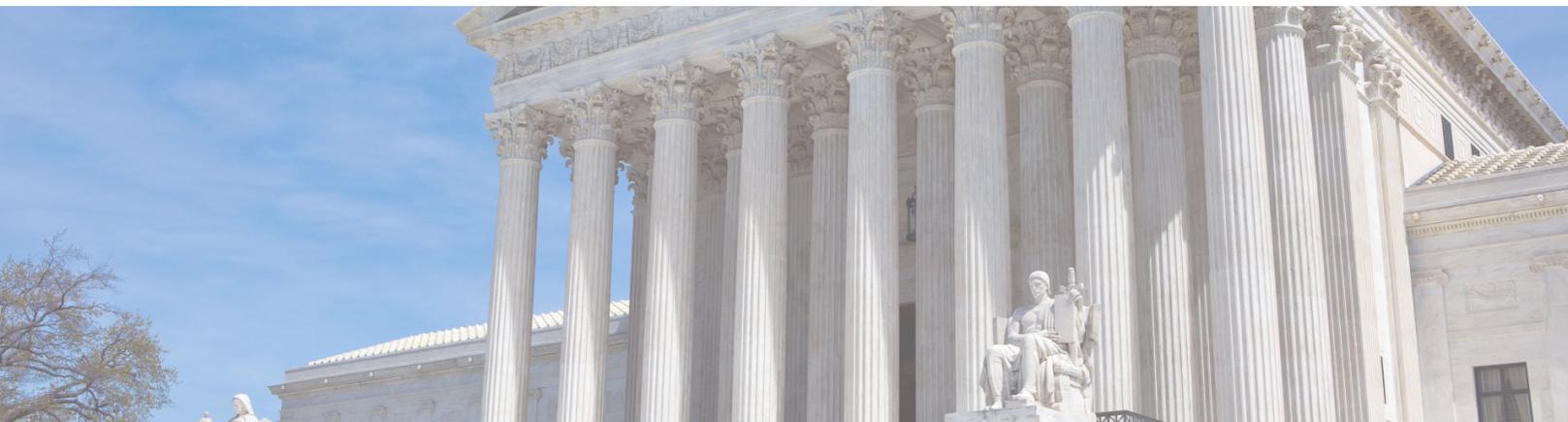
This, however, is not a new trend.

Historically, presidents tend to appoint disproportionately more white and male judges than reflected in the population. Although Presidents Barack Obama and Jimmy Carter nearly achieved a reversal of this trend, no president has ever appointed judges that truly reflect the racial, ethnic, and gender diversity of the United States.

Figure 1. 2019 U.S. Population by Race or Ethnicity.



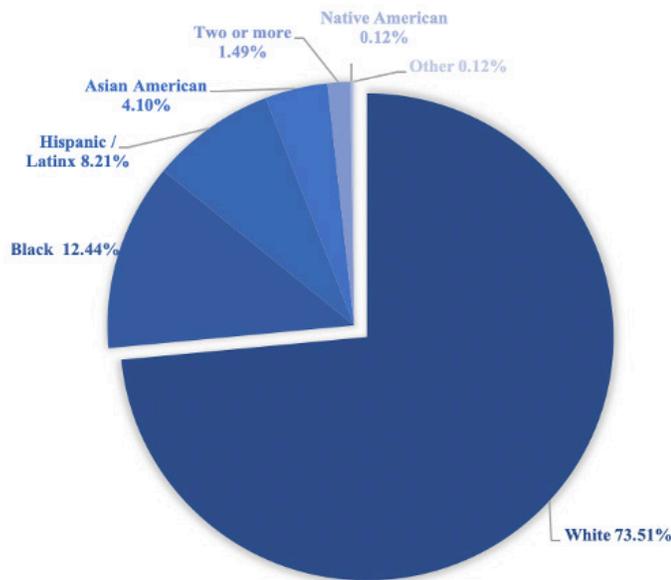
Source: U.S. Census Bureau, QuickFacts.



Twenty-two percent of President Jimmy Carter’s judicial appointments were judges of color (Figure 4), surpassing the percentage of people of color in 1980, which was 16.9 percent.ⁱⁱⁱ This was the only time in U.S. history where a president appointed more people of color than reflected in the national averages. Around this time, however, women made up roughly 51 percent of the U.S. population,^{iv} but only about 16 percent of President Carter’s judicial appointments.^v

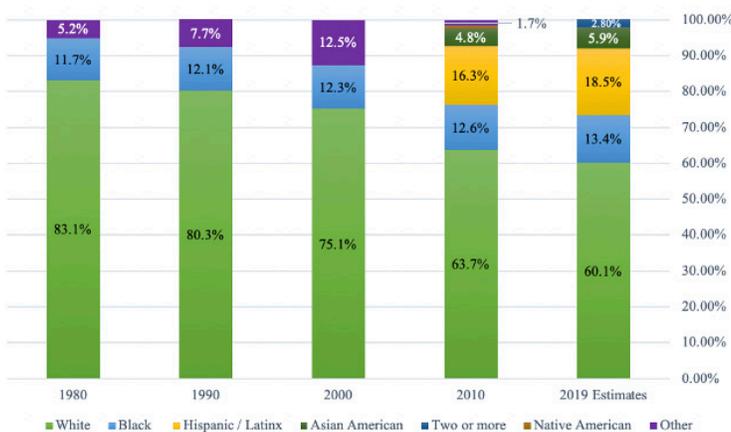
Towards the end of President Ronald Reagan’s presidency, 80.3 percent of the total population identified as white, whereas 19.8 percent of the population identified as a race or ethnicity other than white. Out of the total number of judges appointed by President Reagan, 94 percent were white and only around 6 percent were people of color, 13.8 points under the national average and 16 points behind

Figure 2. Active Judges by Race or Ethnicity



Source: Federal Judicial Center, Biographical Directory of Article III Federal Judges, 1789-present.

Figure 3. U.S. Population Estimates.



Source: U.S. Census Bureau.

President Carter’s appointments (Figures 3 and 4). That same year, 51.25 percent of the total population identified as women.^{vi} Out of the total number of judges appointed by President Reagan, only a mere 8 percent were women.^{vii}

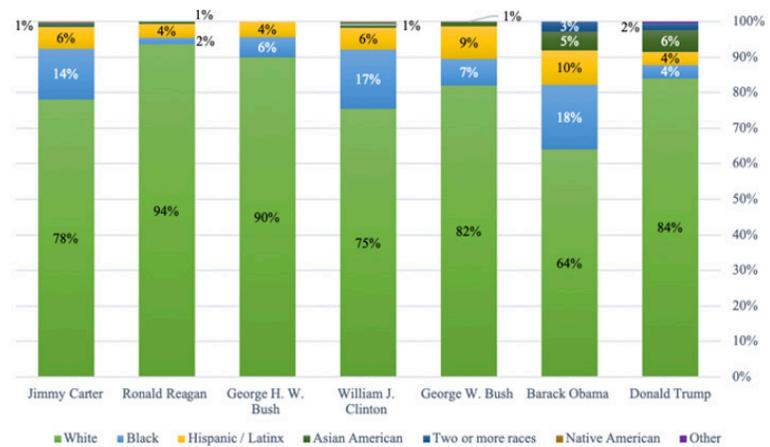
President Obama made considerable advancements to judicial diversity, appointing the most diverse nominees in history. Ten percent of judges appointed under President Obama were Hispanic/ Latinx, 18 percent were Black, and 5 percent were Asian American (Figure 4). In comparison, 13.4 percent of people in the United States currently identify as Black, 18.5 percent as Hispanic/ Latinx, and 5.9 percent as Asian American.^{viii} Out of all the

judges appointed by Obama, 42 percent were female judges.^{ix} While this falls 8.9 points under the national average, it vastly exceeds any president before him.^x Notably, President Obama’s confirmed Supreme Court Justices were both women, including the first Latina Supreme Court Justice: Associate Justice Sonia Sotomayor. This progress, however, has stalled during the presidency of Donald Trump. Eighty-four percent of judges appointed by President Trump identify as white, a staggering 23 points above the national average.^{xi} Nearly 76 percent of judges appointed under President Trump are men, 26 points above the national average and 34

points above President Obama’s appointees.

Racial and ethnic diversity in the U.S. is growing at a much faster rate than diversity on the federal bench. In order to achieve a true representative judiciary, it is critical that the court reflect the diversity of the jurisdictions they hear cases from. For example, the Seventh Circuit Court of Appeals, which hears cases from Illinois, Indiana and Wisconsin, appallingly doesn’t have a single judge of color serving on the bench.

Figure 4. Presidential Appointments by Race or Ethnicity.



Note: percentages <1% are not shown on graph.
 Source: Federal Judicial Center, Biographical Directory of Article III Federal Judges, 1789-present.

By 2044, it is estimated that a majority of people living in the United States will identify as people of color.^{xii}

Appointing judges of color and women judges is not only an effort to simply increase representative diversity, it is also an effort to increase public trust, accessibility, accountability, and impartiality. The courts hear a wide range of cases impacting the lives of Americans: criminal justice, workers’ rights, voting rights, LGBTQ rights, reproductive rights, and more. As each judge brings their own unique perspective to understand the cases before them, judges of color, women judges, and those with backgrounds in civil rights and representing everyday Americans tend to bring a more expansive and very much needed perspective in deciding cases because they fully understand the implications of their opinions.

Looking Forward

It is extremely important for presidents to appoint judges that reflect the demographics of the United States. Upon assuming office in January 2021, President Joe Biden must commit to doing so and prioritize nominating judges of color, women judges, and judges from professionally diverse backgrounds, such as those with civil rights and public defender experience. For the first time in several decades, our Supreme Court doesn’t have an attorney in the mold of Justice Thurgood Marshall and Justice Ruth Bader Ginsburg, who spent their careers as attorneys fighting for civil rights, and it is imperative that President-elect Biden appoint attorneys who are racially diverse, fair, impartial and committed to equal justice under law.

As Justice Sonia Sotomayor said, “A different perspective can permit you to more fully understand the arguments that are before you and help you articulate your position in a way that everyone will understand.^{xiii} To obtain this vision, we must commit to diversifying the judiciary.

Endnotes

- ⁱ AM. CONST. SOCIETY, DIVERSITY OF THE FED. BENCH (2020), <https://www.acslaw.org/judicial-nominations/diversity-of-the-federal-bench/>
- ⁱⁱ ALICIA BANNON & JANNA ADELSTEIN, STATE SUPREME COURT DIVERSITY - FEB. 2020 UPDATE (Brennan Ctr. 2020), <https://www.brennancenter.org/our-work/research-reports/state-supreme-court-diversity-february-2020-update>
- ⁱⁱⁱ FRANK HOBBS & NICOLE STOOPS, DEMOGRAPHIC TRENDS IN THE 20TH CENTURY (U.S. Census Bureau 2002), <https://www.census.gov/prod/2002pubs/censr-4.pdf>
- ^{iv} U.S. CENSUS BUREAU, NAT'L INTERCENSAL TABLES: 1900-1990 (2016), <https://www.census.gov/data/tables/time-series/demo/popest/pre-1980-national.html>
- ^v FED. JUD. CTR, BIOGRAPHICAL DIRECTORY OF ART. III FED. JUDGES (1789-Present), (<https://www.fjc.gov/history/judges/search/advanced-search>)
- ^{vi} CTR. FOR DISEASE CONTROL AND PREVENTION, RESIDENT POPULATION, BY AGE, SEX, RACE, AND HISPANIC ORIGIN (1950-2012), <https://www.cdc.gov/nchs/data/hus/2012/001.pdf>
- ^{vii} FED. JUD. CTR. *supra* note 5.
- ^{viii} U.S. CENSUS BUREAU, QUICK FACTS (2019), <https://www.census.gov/quickfacts/fact/table/US/PST045219>
- ^{ix} FED. JUD. CTR. *supra* note 5.
- ^x *Id.*
- ^{xi} *Id.*
- ^{xii} U.S. CENSUS BUREAU, PROTECTING MAJORITY - MINORITY: NON-HISPANIC WHITES MAY NO LONGER COMPRISE OVER 50 PERCENT OF THE U.S. POPULATION BY 2044 (2014), https://www.census.gov/content/dam/Census/newsroom/releases/2015/cb15-tps16_graphic.pdf
- ^{xiii} Katie Reilly, Justice Sotomayor Calls for More Supreme Court Diversity, TIME (Apr. 9, 2016), <https://time.com/4287655/sonia-sotomayor-supreme-court-diversity/>

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