



More Money, More Problems

Fleeting Victories for Diversity on the Bench

By Michele L. Jawando and Billy Corriher October 2015

Center for American Progress



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Introduction and summary

As America winds down its celebration of the 50th anniversary of the Selma-to-Montgomery March and the Voting Rights Act of 1965, the country continues to reflect on the progress made toward racial and political equality. One cannot help but recognize the crucial role the judiciary played and continues to play in achieving this progress, whether it was the U.S. Supreme Court declaring “separate is not equal,” as it did in *Brown v. Board of Education*,¹ or the more recent decision in *Shelby County v. Holder*, which struck down a key provision of the Voting Rights Act.²

While the role of the federal judiciary and the decisions it metes out are often examined, far less focus and study is directed to the role of state courts and their impact and influence on ordinary citizens. Even less is known about who sits on these courts and their backgrounds, both personal and professional. While our courts are supposed to be fair arbiters of justice for all, communities are forced to wrestle with the fact that their judicial benches are filled with people who are not representative of their constituents. In many states, the judges do not look like the defendants and plaintiffs who stand in front of them. This report examines one of the myriad reasons for that discrepancy by looking at how judicial elections and the rising costs of judicial campaigns keep individuals of color off the bench. Just as importantly, this report also examines how that glaring lack of diversity calls into question the overall fairness of our justice system.

Progress 2050, a project at the Center for American Progress that examines the racial, ethnic, and demographic shifts in our nation, has made note of the reality that the United States is well on its way to becoming a nation with no clear racial or ethnic majority.³ In fact, people of color already make up more than 40 percent of the population in 13 states.⁴ By 2044, the majority of the U.S. population will be people of color, according to estimates based on data from the Bureau of the Census.⁵

What do these demographic shifts actually mean for the country, and specifically, for our justice system? As a nation, we have wrestled with how to use the Voting Rights Act and other policy solutions to help create a more inclusive and just society. The results, in terms of political equity for women and people of color, are mixed. For example, the country has now twice elected an African American to the highest office in the land.

But according to the Reflective Democracy Campaign and its new database of more than 42,000 elected officials, whites and white men dominate elected offices. Women and people of color are vastly underrepresented.⁶ Elected politicians in the United States are overwhelmingly white—90 percent—and male—71 percent. While men of color make up 19 percent of the population, they account for only 7 percent of elected officials. Likewise, women of color are 19 percent of the population but hold only 4 percent of elected offices. White women are proportionally slightly better off when it comes to elected office: They are 32 percent of Americans and 25 percent of elected officials.⁷

In an increasingly competitive marketplace, employers are responding to America's demographic shift with a greater appreciation of the need for a diverse workplace, often because of the many tangible benefits. The federal Glass Ceiling Commission⁸ found that diversity has a positive impact on an organization's bottom line:

Organizations which excel at leveraging diversity (including the hiring and advancement of women and nonwhite men into senior management jobs, and providing a climate conducive to contributions from people of diverse backgrounds) will experience better financial performance in the long run than organizations which are not effective in managing diversity.⁹

One of the many statistics used to bolster this finding was a study by Covenant Investment Management, which rated the performance of the Standard & Poor's 500 companies on a series of factors related to the hiring and advancement of women and nonwhites.¹⁰ The study found that the annualized returns for the 100 companies rated lowest in equal employment opportunities earned an average return on investment of 7.9 percent, compared with an average 18.3 percent return on investment for the 100 companies that rated highest.¹¹ Despite these benefits, there is a startling lack of diversity at the highest echelons of corporate governance. In a 2012 study of Fortune 500 CEOs conducted by the Center for American Progress, only 21—a mere 4.2 percent—were people of color: In that group of 500 CEOs, there were four blacks, nine Asians, and six Latinos.¹²

While the workplace continues to examine inclusion, our classrooms are becoming a lot less diverse. A 2014 article in *The Atlantic* profiled high schools in Tuscaloosa, Alabama, after the school system was released from federal judicial supervision stemming from a long-running integration lawsuit.¹³ According to the article, “while segregation as it is practiced today may be different than it was 60 years ago, it is no less pernicious: in Tuscaloosa and elsewhere, it involves the removal and isolation of poor black and Latino students, in particular, from everyone else.”¹⁴

Issues of inclusion often come before the state supreme courts, which determine the scope of important constitutional rights such as the right to vote¹⁵ and the right to an adequate education.¹⁶ And it is up to state court judges to settle contract and family disputes, as well as hear the vast majority of criminal cases. That is why who sits on these courts matters. Judges’ awareness of issues important to their communities, and the lens through which they view cases, will vary. While we expect our courts and our judges to be fair, we should also expect our judiciary to reflect the communities they serve.

As our country grapples with demographic change and the associated issues, there is a dearth of scholarship and data around judicial diversity—specifically, where the judiciary intersects with the political process through judicial elections. This report aims to add to that sparse canon of information.

The problem

President Barack Obama has made great strides in increasing judicial diversity at the federal level, though much remains to be done. For the first time, a majority of the 137 judges on the U.S. courts of appeals are women and people of color. President Obama has also appointed 109 federal judges who are either women or people of color—the most in history.¹⁷ He has also appointed four circuit judges with experience as public defenders—more than all presidents in history combined¹⁸—but he has appointed still more prosecutors.¹⁹ As *The New York Times* noted in 2014, “Federal judges continue to be drawn overwhelmingly from the ranks of prosecutors and corporate lawyers. This deprives the courts of crucial perspectives and reduces public trust in the justice system.”²⁰

At the state level, where most judges are elected, our courts clearly do not reflect the diversity of the U.S. population. There are 340 state supreme court justices in the United States²¹—but the relevant information about their backgrounds is lacking. A 2009 study from the American Judicature Society found that only 10 percent of state supreme court justices are nonwhite.²² A 2011 report by Fox News Latino found that only 3 percent of state supreme court justices were Latino—just 10 jurists.²³

A half-century after civil rights activist and Democratic Rep. John Lewis (GA) marched with other brave souls from Selma to Montgomery, Alabama, for the right to vote, not one of the state’s 19 appellate judges is black.²⁴ White Alabamans comprise only two-thirds of the state’s population, but they constitute all of its appellate court judges. In Alabama and in other states with exorbitant spending in their judicial elections, governors appointed diverse justices to vacant seats in the last two decades, but when facing the voters to retain their seats, these jurists find themselves voted off the bench at a higher rate than their white counterparts. Since the 1990s, Alabama has seen the amount of money spent in state Supreme Court elections explode, and during that time, not a single African American has sat on the state Supreme Court.²⁵

The first black chief justice in America, Robert N.C. Nix Jr., was initially elected to the Pennsylvania Supreme Court in 1971, the first African American elected to statewide office in Pennsylvania.²⁶ Justice Nix’s spokesperson later noted that he was the only member of the court to have an integrated staff of law clerks, and he spoke out against prosecutors excluding black citizens from juries.²⁷ Reports later surfaced that a fellow justice once threatened to “expose” the fact that Justice Nix was black in advance of the 1981 election.²⁸ The same justice was reported to have used racial slurs when discussing the chief justice.²⁹

Chief Justice Nix retired after he reached the state’s mandatory retirement age in 1996, around the time that millions of dollars began pouring into Pennsylvania Supreme Court races. Since then, the Pennsylvania Supreme Court has been made up of only white justices,³⁰ despite communities of color accounting for more than one-fifth of the state’s population. All seven candidates in the upcoming 2015 Pennsylvania Supreme Court election are white,³¹ and they have collectively raised more than \$8 million—a record for the Keystone State.³²

Recent protests in African American communities across America in the wake of deaths of unarmed black men by law enforcement—and the subsequent lack of indictments of those officers—have highlighted the lack of trust and the vast disconnect between these communities and the justice systems operating in them.³³ While policing and the role of law enforcement in communities of color are often examined, more attention is starting to shift to the court systems. When the U.S. Department of Justice, or DOJ, reviewed the practices of the Ferguson, Missouri, municipal court systems, it found evidence of “racial bias by those with considerable influence over the outcome of any given court case.”³⁴ The Ferguson courts were not representative of the city’s population, and DOJ found that the justice system imposed unreasonable and discriminatory fines and penalties on black residents.³⁵

When judges do not look like the defendants or litigants in court, or if there is a perception that people of color are treated with bias, communities of color will have a more difficult time turning to the courts and trusting their decisions. Unfortunately, communities of color may justifiably question whether the justice system and the courts will respect them and their rights. When entire communities lose faith in an essential component of our system of government, we all lose.

It is also clear that diversity on the bench can affect decision-making, as a variety of perspectives that could be brought to bear are missing without diversity. Studies have shown that various aspects of judges' backgrounds are correlated with their rulings in certain areas of the law.³⁶ A 2005 study found that male judges sentenced female criminal defendants to less severe sentences, due to so-called paternalistic bias.³⁷ That same study noted, "the greater the proportion of female judges in a district, the lower the sex disparity" in sentencing.³⁸ Another study, this one focused on racial harassment claims in federal court, found that plaintiffs were much more likely to win in cases before African American judges.³⁹ Another study looking at sexual harassment claims examined the decisions by three-judge panels in federal appeals courts and found similar results: Panels that included at least one female judge were twice as likely to rule for plaintiffs.⁴⁰ If this research is correct, the white males who overwhelmingly populate our courts are less likely to rule for plaintiffs in civil rights cases.

Diversity on the bench means more perspectives are brought to bear on complicated issues, and this leads to better decisions. Former law Professor Sherrilyn Ifill, who is now president and director-counsel of the NAACP Legal Defense Fund, has spoken on this issue at length and has remarked that, "The interaction of these diverse viewpoints foster impartiality by diminishing the possibility that one perspective dominates adjudication."⁴¹ Our justice system is made up of fallible people. To continually balance the scales of justice, therefore, multiple points of view must be represented.

During her confirmation process, Justice Sonia Sotomayor was criticized when she said that a "wise Latina" judge may make a different decision than a white male judge.⁴² But we have seen that having a diversity of experiences can make a difference. Many pointed this out after the Supreme Court's recent Confederate flag decision. In a very rare occurrence, Justice Clarence Thomas joined the Court's liberals to rule that Texas could refuse to issue Confederate flag license plates.⁴³ Justice Thomas also dissented in a 2003 case that struck down a law that banned the burning of crosses.⁴⁴ Justice Thomas is arguably the most conservative justice, traditionally seen as hostile to civil rights plaintiffs, but he is also the lone African American justice on the Court and was raised in the segregated Deep South.⁴⁵

Judicial diversity matters, and this report raises serious concerns about the role of judicial elections—and the myriad roles that bias, politics, and other issues play—in inhibiting diversity on state supreme courts. If the goal is to have a country where all citizens trust their courts, then judges must reflect the diversity of America and the populations that they are sworn to serve.

This report seeks to ascertain any difference in re-election rates for black and Latino justices, highlight politicized elections that negated short-lived victories for judicial diversity, and offer solutions to address the problem by mitigating the influence of campaign cash and fostering a pipeline of diverse lawyers and judges.

Methodology and results

As the amount of money in judicial elections exploded in the 1990s, many scholars began to criticize the uniquely American practice of electing judges and advocating appointment systems.⁴⁶ Candidates in state supreme court races raised more than \$211 million from 2000 to 2009—two and a half times more than in the 1990s.⁴⁷ Some bar associations formed by lawyers of color and other advocates for judicial diversity argued at the time that judicial elections had helped promote diversity, particularly at the local level.⁴⁸ But as the wave of campaign cash overwhelmed more state supreme courts, judges of color lost their seats.

To ascertain whether our increasingly expensive judicial elections are inhibiting progress in diversifying the bench, the Center for American Progress collected data on every incumbent supreme court justice who has run for re-election since 2000. To determine the race and ethnicity of the justices, CAP relied on various sources and often extrapolated the race and ethnicity of white justices from sources that listed the number of diverse justices. There were several sources, such as the “State Court Organization 2004” report from the Bureau of Justice Statistics, that listed the number of white, black, and Latino justices on each state supreme court. CAP then found other sources, such as news articles, that named the diverse justices and labeled the remaining justices white. For justices that were not included in these sources, CAP relied on databases such as the American Bar Association’s “Directory of Minority Judges of the United States” to ascertain the race or ethnicity of the justices, and justices who were not listed were assumed to be white. The data do not include justices who ran in retention elections, which have historically seen much less money.

Since 2000, the overall re-election rate for incumbent supreme court justices in states with contested races was 88 percent, with a 90 percent re-election rate for white incumbents. Latino justices were successful in only 67 percent of their re-election bids, and black justices had an 80 percent re-election rate. In order to shed light on why these disparities exist, CAP examined judicial elections involving diverse incumbents in Pennsylvania, Texas, Alabama, Ohio, Wisconsin, and North Carolina.

These findings raise alarming questions about the role of race and ethnicity in judicial elections—and about the particular obstacles for re-election that diverse candidates face. With the re-election of President Obama in 2012, many commentators argued that the nation was experiencing the dawn of a post-racial America.⁴⁹ Yet the 2012 elections saw the most racially polarized voting in recent U.S. history.⁵⁰

FIGURE 1
Re-election rates for incumbent state supreme court justices in contested elections, 2000–2015

White justices had much higher re-election rates than black and Latino justices



Source: See Table A1.

In 2013, the U.S. Supreme Court held in *Shelby County v. Holder*—in a 5-to-4 decision—that a key provision of the Voting Rights Act was unconstitutional.⁵¹ It faulted Congress for relying on discrimination from decades in the past to determine which states and municipalities were required to receive prior clearance, or preclear, for voting changes with the Department of Justice or a federal court. Chief Justice John Roberts’ opinion declared, “Our country has changed, and while any racial discrimination in voting is too much, Congress must ensure that the legislation it passes to remedy that problem speaks to current conditions.”⁵²

While the chief justice’s opinion spoke with aspirational hope that our complicated history with racial discrimination had been relegated to the past, recent history demonstrates that we as a nation have not yet reached that point. As Justice Ruth Bader Ginsburg’s dissent noted, Congress had—as recently as 2006—reauthorized the Voting Rights Act and “determined, based on a voluminous record, that the scourge of discrimination was not yet extirpated.”⁵³ Justice Ginsburg also noted that racially polarized voting persists, and this “means that racial minorities are at risk of being systematically outvoted and having their interests underrepresented in legislatures.”⁵⁴

The election of President Obama in 2008 led many pundits to applaud the end of racism in voting, but a series of studies has found that race continues to influence voting patterns. A 2010 study by Vesla Weaver, for example, found that candidates' race and skin color "affects their electoral prospects, voters' perceptions of their political qualifications, and evaluations of how they'll perform in office on various issues."⁵⁵

While this CAP study does not seek to determine why diverse justices have lower re-election rates than white justices, the results of the study should raise questions for anyone who believes that race no longer matters in voting. Moreover, it should require advocates for judicial diversity to examine how we choose judges.

In 2005, a report from the Lawyers' Committee for Civil Rights Under Law, Justice at Stake, and the Brennan Center for Justice examined how different methods of judicial selection affect diversity on state courts. The report—"Answering the Call for a More Diverse Judiciary"—stated, "Although many minority communities favor judicial elections over the appointments process, neither of these selection models does an adequate job of promoting minorities to the bench."⁵⁶ The report concluded:

The success of each model ... depends heavily on the political clout and influence held by the different minority groups within their local communities. For example, in states with a large Hispanic or African American voting age population, judicial elections have produced a greater number of judges of color than would be possible in states with a small minority community. Alternatively, minority judicial candidates in states that utilize an appointment process have only been successful in rising to the bench when the appointing authority was committed to diversity and minority advocates were able to lobby and persuade those involved in the election process.⁵⁷

In many states with elections, advocates for diversity have succeeded in pressing for diverse appointments, but these victories are often fleeting. In many states where diverse judges were appointed, they were voted off the bench in the next election. According to new research for this report, appointed black and Latino justices running in their first election only had a 68 percent re-election rate.

"Answering the Call" noted that "minority candidates who pursue judicial positions are often faced with unique barriers to office such as racially polarized voting and the inability to raise sufficient campaign funds."⁵⁸ A more recent report from Demos, a progressive institution dedicated to diversity among elected officials,

elaborated on these barriers: “It’s likely that fewer candidates of color run for office because they accurately perceive the need for access to networks of wealthy donors that they do not have. ... When candidates of color do run, they raise less money than their white counterparts, and as a result are (all else equal) less likely to win elected office.”⁵⁹

Although most studies on race and voting have not examined judicial elections, there is no reason to think that the barriers facing elected politicians are not also present in judicial races. If the amount of campaign cash is a barrier for non-white judicial candidates, then this barrier has been steadily increasing in recent decades.⁶⁰ Advocates for diversity on the bench must work to mitigate the influence of big-money campaign spending in judicial elections.

The steep rise in campaign money in judicial elections may help explain why diverse justices have not fared well in recent elections, especially in courts that have seen the most campaign cash. Furthermore, there may be a correlation between the amount of money in judicial races and the degree to which voters are aware of a candidate’s race. More money means more advertising, which could mean more opportunities for appeals playing on racial bias. With notable exceptions, explicit or overt racial appeals are not apparent in judicial elections or judicial campaigns. However, social psychologists argue that unconscious or implicit biases have a powerful effect on how people evaluate one another.⁶¹ Implicit bias is widespread: The vast majority of adult Americans, for example, more closely associate white faces with positive imagery and black faces with negative imagery.⁶² As much as we as a country would like to believe that race no longer affects our elections, it is important to recognize that race has and will continue to play a profound role in how Americans view one another. This report does not seek to uncover all the reasons for the disparity in re-election rates for black and Latino justices, which could be the result of implicit bias among voters, barriers related to money in campaigns, party politics, and other factors.

Elections in which diverse incumbents were voted off the bench

This report profiles five state supreme court elections in which an incumbent justice of diverse background—defined here as a person of color—lost his or her seat. All of the elections highlighted were in states that, at the time of the elections, were being inundated with millions of dollars in campaign cash in their judicial elections. Two of the elections—in Texas and Wisconsin—featured campaign ads or candidate statements that some perceived as racist, while the election in Ohio illustrates the way that a candidate’s last name, often an indication of ethnicity, can affect an election. And the North Carolina and Alabama Supreme Court races demonstrate how an incumbent diverse candidate’s election loss often correlates with a steep rise in campaign cash.

Ohio

In the past two decades, elections for the Ohio Supreme Court have seen millions of dollars’ worth of ads from political parties and corporate-funded groups such as Citizens for a Strong Ohio and Partnership for Ohio’s Future, an affiliate of the state Chamber of Commerce.⁶³ After a series of court rulings that angered business leaders, including rulings that struck down tort reform laws that limited legal liability, corporate-funded groups spent millions of dollars to elect their preferred justices.⁶⁴ The percentage of rulings in favor of injured plaintiffs declined as the amount of campaign cash increased.⁶⁵

The increase in campaign cash also corresponded with a loss of racial and ethnic diversity on the court. Although the court included a black justice as far back as 1969, there were no black justices for 38 years.⁶⁶ The state’s second black justice, Lloyd O. Brown, was appointed in 1971.⁶⁷ When he ran for re-election the following year, he said that his re-election would help show black citizens that “they, too, can have a piece of America’s action. You’ve got to show them the system is working.”⁶⁸

Justice Brown lost his re-election bid, and the court had no racial diversity until 2011, when Justice Yvette McGee Brown was appointed, the first black woman to serve on the court.⁶⁹ Like Justice Brown before her, she ran for re-election the year after being appointed and lost.⁷⁰

The victors in the 2012 Ohio Supreme Court election were Justices Bill O’Neill, Sharon Kennedy, and Terrence O’Donnell, an incumbent.⁷¹ Local media questioned whether it was a coincidence that the winners all had Irish surnames.⁷² Justice Kennedy defeated incumbent Justice McGee Brown, despite the fact that Justice Kennedy had been rated “not recommended” by the Ohio State Bar Association. On the other hand, the bar association had rated McGee Brown “highly recommended.”⁷³ A columnist at *The Columbus Dispatch* noted that two respected incumbents, including Justices McGee Brown and Robert Cupp, were ousted by “two candidates blessed with Irish names.”⁷⁴

This phenomenon of voter preference for a particular type of last name—in this case, an Irish surname—raises questions about what subconscious patterns are at play since voters rejected a candidate who was more qualified in favor of another candidate seemingly based only on the fact that he or she had a particular surname. This name game may shed light on why Latino justices have lower re-election rates than both white and black justices, according to new research for this report.

A 2002 study by a California appellate judge examined the surname issue in a series of retention elections for California’s appellate courts from 1982 to 1998.⁷⁵ The study compared election results with several features of the candidates’ names and found: “Another variable that had a significant effect on voters was whether the justice had a Hispanic-sounding name.”⁷⁶ The author found that voters were also less likely to vote for candidates with names that sounded Jewish or German.⁷⁷

Voters may often assume that they know a justice is Latino based on his or her name, and many may vote against the jurist for that reason. Illinois Judge Sandra Otaka spoke of the difficulties faced by judges with Asian names:

*I was told to put an apostrophe after my O because if I did that, I would have a greater chance of winning county-wide ... [I]f it isn’t O’Brien or O’Malley or it isn’t Smith or it isn’t a name that they have a level of comfort with, then it’s going to be a lot more difficult for them to get elected.*⁷⁸

The California study found that the disadvantage for candidates with Hispanic surnames varied by region.⁷⁹ As some advocates for judicial diversity have pointed out, candidates with Latino names have done well in local races in diverse jurisdictions, but in statewide races, they may face challenges because the voting population is less diverse.⁸⁰ The election of a Latino justice in Washington state showed a similar discrepancy in election returns in urban and rural areas of the state.⁸¹

Texas

In 2002, after succeeding in his lawsuit to strike down the University of Texas School of Law's affirmative action admissions policy, attorney Steven Wayne Smith decided to run for a seat on the Texas Supreme Court. Justice Xavier Rodriguez, who had been appointed to a vacant seat by Gov. Rick Perry (R), was on the ballot in 2002. The *Houston Chronicle* reported: "Smith said one of the reasons he decided to challenge Rodriguez was because he thought a Hispanic wouldn't do well in the Republican primary."⁸²

The *Chronicle* interviewed Smith after his primary win, and while railing about affirmative action, soon-to-be-Justice Smith suggested that Justice Rodriguez was "underqualified" for his education at Harvard and questioned his choice of major.⁸³ "It might, to me, be better to go to [The University of Texas] and be in a mainstream program," Smith said. Justice Rodriguez told the *Chronicle* that, despite Smith's assumptions, he "did well at Harvard."⁸⁴

Justice Smith's win in the 2002 Republican primary basically ensured him a seat on the Texas Supreme Court, which has not included a Democrat in decades. In the early 1990s, political consultant Karl Rove ran efforts to elect pro-corporate justices in Texas after the state Supreme Court struck down tort reform laws that limited legal liability and gained a reputation for favoring plaintiffs in lawsuits.⁸⁵ The efforts worked. *Mother Jones* reported that, "By the 1997-98 term, defendants were winning 69 percent of the time, and insurance companies, doctors, and pharmaceutical firms were winning nearly every case."⁸⁶

In the midst of these trends, Gov. Perry appointed black and Latino jurists, including Justice David Medina, to the Texas Supreme Court. Justice Medina was unopposed in the 2006 Republican primary but was defeated in the 2012 primary by now-Justice John Devine.⁸⁷ *The Dallas Morning News* quoted wit-

nesses who claimed Justice Devine said he ran against Justice Medina because he could “beat a guy with a Mexican last name.”⁸⁸ Justice Devine gained notoriety in Texas after refusing to remove a painting of the Ten Commandments from his courtroom.⁸⁹

Wisconsin

After Louis Butler graduated from Marquette University Law School in 1977, he worked as a public defender in Milwaukee.* Butler earned a reputation for his legal prowess and was appointed in 2004 to the Wisconsin Supreme Court—the first African American justice in the state’s history.⁹⁰ While on the bench, Justice Butler was perceived as a defender of individual rights in civil and criminal cases.⁹¹

Justice Butler faced the voters in 2008. No incumbent justice had lost re-election in more than 40 years, but Justice Butler’s opponent, Michael Gableman, ran a misleading attack ad that made it seem that Justice Butler helped a rapist go free. The ad stated that Justice Butler, as a former public defender, had “worked to put criminals on the street, like Reuben Lee Mitchell, who raped an 11-year-old girl with learning disabilities. Butler found a loophole. Mitchell went on to molest another child.”⁹²

FIGURE 2

Wisconsin Justice Louis Butler faced a misleading attack ad



Source: Terry Canaan, "Racist, Misleading Wisconsin Supreme Court Election Ad: 'Prosecutor'," YouTube, March 4, 2010, available at <https://www.youtube.com/watch?v=1haqLYB1cw0&feature=youtu.be>.

In reality, Justice Butler lost the case when he represented Mitchell, who went to prison and served his sentence before sexually assaulting another child. Although Justice Butler expected that his record as a public defender might open him up to attacks, he was confused as to why the ad would focus on a defendant whose case he had lost and who was convicted and served time in prison.⁹³

“The reason why we think they used this particular individual ... was because they were trying to find someone who looked as close to me as possible, so that they could emphasize the fact that a black justice was on the ballot,” Justice Butler said.⁹⁴ The ad featured a picture of the criminal alongside an image of Justice Butler.

The state of Wisconsin—particularly the Milwaukee area—was experiencing a lot of racial tension around the time of the 2008 election. A recent article in *The New Republic* described the “poisonous, racially toxic” atmosphere in and around Milwaukee, after black and Latino residents moved in and white residents moved out during the two decades leading up to the 2008 election.⁹⁵ A series of articles in the *Milwaukee Journal Sentinel* at the time explored the deep political divide in the area and said that, “Milwaukee is the nation’s most racially segregated metropolitan area by several measures.”⁹⁶ Justice Gableman’s attack ad played on the divisive racial politics of greater Milwaukee—by far the state’s largest city.

Justice Butler’s office told him that voters had called after the attack ad and said that they did not know that Justice Butler was black. Butler reported that the callers said, “‘We can’t vote for a black man.’ ... It was very troubling. How do you respond to something like that?”⁹⁷

Of the four appointed justices who have run for re-election in Wisconsin history, Justice Butler is the only one who lost.⁹⁸ Just before his race, all seven Wisconsin justices called for public financing.⁹⁹ The state legislature agreed. Wisconsin had a robust public financing system for the 2011 Supreme Court election, but it was overwhelmed by independent spending by groups that were not affiliated with the candidates.¹⁰⁰ The state capital in 2011 was bitterly divided and gripped by protests against Gov. Scott Walker’s (R) anti-collective bargaining bill, which was being challenged in state court.¹⁰¹ Both sides in the debate—organized labor and big business—spent millions of dollars, far more than the \$300,000 in public funds offered to candidates.¹⁰² The public financing program was ultimately repealed the next year.¹⁰³ The Wisconsin Democracy Campaign, an advocate for campaign finance reform, has been pushing without success to reinstate the program as a small-donor matching system in which donations under \$100 would be matched with multiples in public funds.¹⁰⁴

Alabama

Alabama voters have elected their Supreme Court justices since 1867, and the court was all white for most of the state's history.¹⁰⁵ Alabama's judiciary was a key component of the state's oppressive, segregationist Jim Crow regime. In 1932, the Alabama Supreme Court affirmed the wrongful convictions of eight of the nine African American teens found guilty by an all-white jury of raping two white women in the infamous Scottsboro Boys case, before the U.S. Supreme Court intervened.¹⁰⁶ The Alabama Supreme Court also upheld the state's post-Civil War forced labor system that many historians compare to slavery.¹⁰⁷ In the 1960s and 1970s, some members of the state's all-white judiciary resisted the U.S. Supreme Court's civil rights rulings.¹⁰⁸ The first black justice on the state Supreme Court was not appointed until 1980.¹⁰⁹

Despite this deplorable history of racism, the state of Alabama ended the 20th century with two African American justices on its Supreme Court. Justice John England Jr., who was appointed to the court in 1999, said that his presence and that of another black justice showed that "the past is behind us."¹¹⁰ The two justices dismissed any concern that racial bias would play a role in voters' decisions. "I don't think it is an obstacle," Justice England said.¹¹¹

Just before the 2000 election, voting rights advocates abandoned an earlier Voting Rights Act lawsuit challenging the state's Supreme Court elections. Black voters had sued the state in 1994, alleging that its Supreme Court districts were drawn in a way that disenfranchised black voters.¹¹² The trial court found "a strong basis" for the plaintiffs' claims.¹¹³ The state had agreed to a settlement that would have required it to appoint black justices to achieve some diversity, but the plaintiffs dropped the lawsuit in 1998, in part due to confidence engendered by the re-election of Justice Ralph Cook, who is African American, a few years earlier.¹¹⁴

Justices Cook and England both lost their seats in the 2000 Alabama Supreme Court election. Both black justices on the ballot were incumbent Democrats, and all the Republican candidates were white. The incumbent justices lost, and the court has not had a black justice since.¹¹⁵

To be fair, the black justices were Democrats caught up in a political wave that turned the all-Democrat Alabama Supreme Court to an all-Republican court. Scholars Charles S. Bullock III and Ronald Keith Gaddie found that in 2000, and in 2006 when Justice England unsuccessfully ran again, "the African American

judicial candidates ... did not do significantly worse than white Democratic nominees.”¹¹⁶ Bullock and Gaddie noted “a systematic decline in white voter support for Democrats running for the Supreme Court or major statewide offices.”¹¹⁷

Regardless of the relative roles of partisanship and race, however, the lack of diversity on Alabama’s appellate courts is unjustifiable. Since 2000, elections in Alabama have not led to a diverse court.

Another disconcerting trend around judicial elections is the correlation between such elections and the imposition of the death penalty. Data support the notion that Alabama’s judicial elections are leading judges to impose the death penalty for convicted defendants—most of whom are black in Alabama—even if a jury votes for a life sentence without parole.¹¹⁸ A study by the Equal Justice Initiative found that, “The proportion of death sentences imposed by override often is elevated in election years.”¹¹⁹ Clayton Lockett, for example, was convicted of murdering a college student, but the jury sentenced him to life in prison, noting mitigating factors such as his severe post-traumatic stress disorder stemming from his military service in Iraq.¹²⁰ But the judge overrode the jury’s verdict and sent Lockett to death row.¹²¹

After the U.S. Supreme Court rejected an appeal from a death row inmate who argued that Alabama’s system of allowing judges to override juries is unconstitutional, Justice Sonia Sotomayor dissented and argued that these judges “appear to have succumbed to political pressure.”¹²² Politics should never determine life and death.

North Carolina

As in Alabama, the North Carolina Supreme Court was more diverse in the late 1990s than at any other time in its history. Both the North Carolina and Alabama Supreme Courts had two African American justices appointed to the bench around that time.¹²³ The 1990s also saw a steep rise in the amount of money in state supreme court elections.¹²⁴ As in Alabama, the two black North Carolina justices lost their seats after increased campaign spending in judicial elections—one in 1998 and the other in 2000.¹²⁵

Just after the 2000 election, legislators in North Carolina implemented reforms that helped restore diversity to the state Supreme Court. The legislature approved a bill that removed partisanship from judicial races and created a public financing

program for judicial candidates.¹²⁶ The program gave candidates several hundred thousand dollars for their campaigns if they qualified by raising a certain number of small donations from North Carolina voters.¹²⁷

Studies have shown that such public financing programs foster diversity, and North Carolina was no exception. Democracy North Carolina noted that as of 2011, all 11 women and all 4 black judges on the state's appellate courts had used public financing.¹²⁸ The group also pointed out that “for the first time in our state’s history, as of 2011, the majority of North Carolina Supreme Court justices are women, thanks in part to the program.”¹²⁹

Advocates for diversity among public officials argue that the money required to run for office serves to deter diverse candidates. Public financing can mitigate the need to raise large campaign donations, thus lowering a barrier to diverse candidates serving in public office. A 2014 article in the *National Journal* profiled Justice Cheri Beasley, an African American, and dubbed her “the candidate public financing was made for.”¹³⁰ The article noted, “Having spent most of her career in public service, Beasley lacks some of the legal and business connections that other judicial candidates use to raise money.”¹³¹

But in 2010, when the Republican Party gained control of all three branches of government in North Carolina for the first time in a century, one Republican official specifically targeted the public financing program for elimination.¹³² Former state legislator Art Pope, whose millions of dollars helped fuel the Republican political takeover of the state,¹³³ was appointed as the governor’s budget director. Pope had long opposed public financing.¹³⁴ The Institute for Southern Studies reported that, as budget director, Pope played a singular role in eliminating the program.¹³⁵ The legislature failed to pass a bill that would have restored partisan elections for North Carolina’s appellate courts,¹³⁶ but it did manage to bring partisanship back to elections for the North Carolina Court of Appeals.¹³⁷

Private campaign cash overwhelmed the state’s public financing system in its last election. In 2012, the public funds were outmatched by spending from groups that were not affiliated with the campaigns.¹³⁸ Money from the Republican State Leadership Committee, or RSLC, a Washington, D.C.-based partisan group, dominated the race.¹³⁹ The committee spent well more than \$1 million, much more than the funds available through public financing.¹⁴⁰

Without public financing, candidates are left to rely on wealthy campaign donors to fund their campaigns. Such systems disadvantage candidates of color. A 2002 report from the American Bar Association said that “there is legitimate cause for concern that privately funded judicial campaigns may limit access to judicial office for all candidates, of color or otherwise, who derive their support from less affluent communities that are unlikely to make significant financial contributions to judicial races.”¹⁴¹ A recent article from Al Jazeera America noted that, “Candidates of color raised 47 percent less money than white candidates in all 2006 state legislative races and 64 percent less in the South.”¹⁴²

Recommendations

Those who advocate a diverse judiciary that reflects the population of this country must work to get money out of our courtrooms. These advocates can push for a system of appointing judges. Merit selection—in which a commission chooses a list of potential nominees based on their qualifications—can be an effective tool for achieving diversity, when the process is structured to take diversity into account.¹⁴³ The merit selection commission for New York’s highest court, for example, is charged with choosing candidates “who reflect the diversity of New York’s citizenry,” and it recently proposed a list of potential nominees that included gender and racial and ethnic diversity.¹⁴⁴ A 2009 American Judicature Society report found that states with merit selection had more diverse supreme courts.¹⁴⁵

Some merit selection systems have not historically resulted in diverse justices, however. Even when diversity is mandated at certain points in the process, lawmakers in some states have ignored the mandate.¹⁴⁶ Diversity must be a factor that is considered and emphasized throughout the merit selection process.

In states that continue to elect judges, advocates for judicial diversity must push for reforms, such as public financing, that lower the barriers to democratic participation. Some cities have used small-donor matching public financing systems that amplify the impact of small donations. In New York City municipal elections, for example, every \$1 of a donation less than \$175 is matched with \$6 in public funds.¹⁴⁷

A report from the Brennan Center for Justice found that one result of this system in New York City has been “a far more diverse crop of candidates who choose to seek office.”¹⁴⁸ The system has led to more diverse candidates who rely more often on small donations from poor and nonwhite neighborhoods. A report from the Brennan Center noted that:

In the program's inaugural run, incumbent Mayor Ed Koch was ousted by David Dinkins, the City's first African-American Mayor, who used the system to finance his race. The first Dominican-American, first Asian-American, first Asian-American woman, and first African-American woman from Staten Island to get elected to City Council used the system. ... And in 2009, for the first time, the City Council is 'majority minority'—a majority of City Council members come from communities of color.¹⁴⁹

As a rule, partisan judicial elections generally mean more campaign cash. Only nine states choose their high court justices in partisan primary or general elections.¹⁵⁰ Eight of these states were among the top 10 in campaign cash from 2000 through 2009,¹⁵¹ though nonpartisan states such as Wisconsin and North Carolina have seen multimillion-dollar judicial races in recent years.¹⁵²

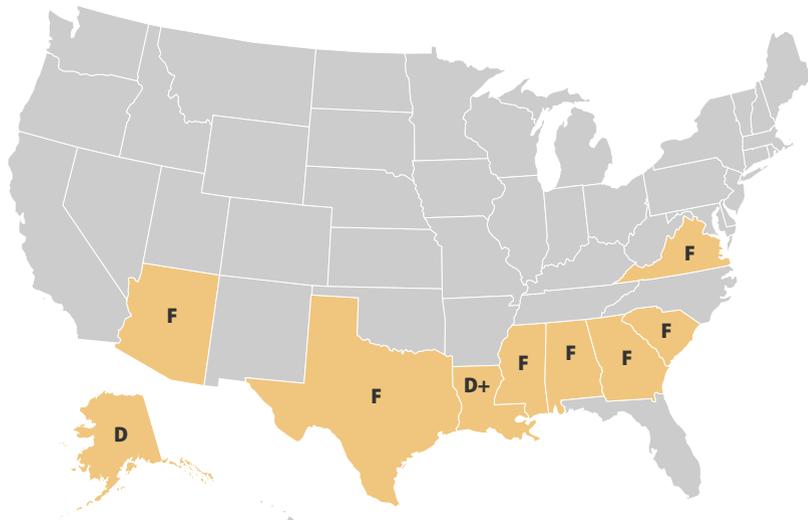
The Lawyers' Committee for Civil Rights Under Law surveyed diverse state court judges and found that those in states with partisan judicial races perceived higher barriers to their ascension to the bench.¹⁵³ The report concluded, "Judges from partisan elective states—those who also were the first of their race and/or gender to make it to the bench in their local area—fundamentally questioned their ability to win election. Indeed, these judges recalled their doubts even while expressing confidence in their preparation, qualifications and abilities."¹⁵⁴ Reformers should push to keep partisanship out of America's courts.

Advocates for diversity in states with judicial elections must also push against the erection of barriers to voting. Several states have faced lawsuits from voting rights advocates who argued that judicial election systems were stacked against candidates of color. Litigation under the Voting Rights Act succeeded in obtaining a majority-black district for Louisiana Supreme Court elections, and Justice Bernette Johnson from that district is now chief justice.¹⁵⁵

Several states with multimillion-dollar judicial elections have also enacted voter ID laws or other voting restrictions in recent years. Since the U.S. Supreme Court struck down a provision of the Voting Rights Act that required states with a history of voting discrimination to pre-clear changes to voting, several Southern states have changed the rules for voting.¹⁵⁶ A recent CAP report graded the health of each state's democracy based on a variety of factors, including access to the ballot. All of the nine states formerly required to preclear voting laws flunked the assessment of their voting laws.¹⁵⁷ Voter ID laws and other restrictive measures have a disproportionate impact on voters of color.¹⁵⁸

FIGURE 3
Voting rights are under attack

How the nine states that used to be protected by the Voting Rights Act perform on access to voting



Source: Lauren Harmon, Charles Posner, Michele L. Jawando, and Matt Dhaiti, "The Health of State Democracies" (Washington: Center for American Progress Action Fund, 2015), available at <https://www.americanprogressaction.org/issues/civil-liberties/report/2015/07/07/116570/the-health-of-state-democracies/>.

Advocates for a diverse judiciary also must help create avenues for African American and Latino lawyers to become judges and for diverse judges to move to higher courts. A 2012 meta-analysis of research on diversity in higher education concluded:

Despite the increase in diversity, minority students do not always feel included. Stigmatized students often perceive barriers to education and certain career paths due to their minority status. For instance, a high percentage of racial minority college students perceive racial discrimination and isolation from non-minority peers.¹⁵⁹

The past five years have seen mixed results for diversity in law schools, but the percentage of black and Latino students in the most prestigious law schools has decreased.¹⁶⁰

Law schools must do more to recruit diverse students and to offer them support and mentoring. A 2009 survey found that African American and Latino lawyers graduated with more student loan debt than white lawyers. Only 17 percent of black lawyers had paid off their student loans, compared with 37 percent of white lawyers and 29 percent of Latino lawyers.¹⁶¹

Bar associations also must provide leadership on diversifying the legal and judicial fields. These associations and the voting public should continue to push governors for diverse appointments to vacant seats. And because diverse appointees have historically faced difficulties getting re-elected, voters who care about judicial diversity must turn out in the midterm and off-year elections in which many judges are elected.

A recent Demos report noted the general decline in turnout in midterm elections and the even greater decline by nonwhite voters. The report found, “Our country’s cumulative voter turnout gaps—historic and contemporary—are also an important factor in the growing misalignment of public policy with the concerns and needs of working-class and low-income people, particularly in communities of color.”¹⁶²

If American voters want judges who reflect the rich diversity of America, they must take a hard look at how they choose judges. Voters should advocate reforms to minimize the influence of big-money campaign donors in courtrooms. And voters of color and others who care about judicial diversity must turn out to vote in judicial elections.

Conclusion

The stories of diverse justices, as well as the findings of this report, suggest that increased campaign spending in judicial elections has a deleterious effect on efforts to foster diversity on state supreme courts. We have lost and are continuing to lose qualified, diverse justices, often in favor of less qualified challengers. These challengers often have used so-called soft on crime or racially polarizing attacks in their campaign advertising in an attempt to appeal to the implicit racial bias of voters. This trend seems to have intensified as the amount of money in judicial races has exploded.

Some advocates for judicial diversity have historically supported judicial elections as a means of achieving diversity in jurisdictions where most voters are black or Latino. This has proven true in some trial courts. In Miami-Dade County, Florida, for example, some in the local media argue that candidates with Latino surnames have had success in judicial races.¹⁶³ One Miami judge said in 1997 that he had the “right” name because it was “easily recognizable as Hispanic by Hispanics and ethnically unidentifiable by all other ethnic groups.”¹⁶⁴ In communities where there is a significant population of people of color, judicial elections may in fact increase diversity on the bench.

At the high court level, however, diversity is woefully lacking. In 2011, only 3 percent of state supreme court justices were Latino.¹⁶⁵ CAP’s study found that Latino justices have won only two-thirds of their re-election campaigns since 2000. White justices, by contrast, won 90 percent of the time. Two Latino justices in Texas recently lost their re-election bids to less experienced white candidates.¹⁶⁶

The African American incumbents in our study also had a markedly lower re-election rate—80 percent, 10 percentage points lower than white incumbents. The rate was even lower for male black incumbents. In a variety of states with an excess of campaign cash in judicial elections, from Alabama to North Carolina

to Wisconsin, black justices were appointed to state supreme courts in historic milestones, only to lose their first election. Candidates in Wisconsin's 2007 and 2008 Supreme Court elections spent around \$2 million, vastly more than previous elections, and North Carolina's 2000 election saw nearly as much spending.

Because voters generally know little about judicial candidates, voters may not even be aware of the race of black candidates—unless a black candidate's opponent runs an ad that highlights that fact or employs racist undertones. Wisconsin's first and only black justice lost his seat in 2008, and he argues that his opponent ran a "Willie Horton"-style attack ad that appealed to racism.¹⁶⁷

Given the crucial issues pending in state courts, this lack of diversity, as well as the tactics employed in these judicial campaigns, is alarming. State supreme courts are hearing legal challenges to restrictive voter ID laws, the death penalty, redistricting maps that arguably disenfranchise voters of color, and laws that allow discrimination against LGBT citizens.

State supreme courts are responsible for defining the scope of state constitutional rights. There are crucial rights—the right to vote, the right to a decent education, and others—that are only protected by state constitutions. The state supreme courts interpret those rights, and the composition of these courts matters.

**Correction, October 26, 2015: This report has been updated to reflect that Justice Butler graduated from law school in 1977 and that the Wisconsin Supreme Court voted to support public financing before his election.*

Appendix

The Center for American Progress collected data on every incumbent supreme court justice who has run for re-election since 2000 in states that elect justices in contested elections. The data do not include justices who ran in retention elections. To ascertain the race and ethnicity of the justices, CAP relied on various sources and often extrapolated the race and ethnicity of white justices from sources that listed the number of diverse justices. CAP found sources that mentioned the diverse justices and included the remaining justices as white. For justices who were not on the court when these sources were issued, CAP relied on the American Bar Association’s “Directory of Minority Judges of the United States” and other sources. If a judge was not listed in the directory, CAP assumed the judge was white.

CAP collected data on the elections, as well as the candidates’ names and party affiliations, from Ballotpedia, a website by the Lucy Burns Institute, and from FollowTheMoney.org, a website by the National Institute on Money in State Politics. CAP also culled data from these websites on whether the diverse justices were appointed before the election at issue. Justices who were appointed but who had run previously in a supreme court election were not counted. CAP did not collect data on appointments of white justices.

TABLE A1

Re-election rates for incumbent state supreme court justices in contested elections, 2000–2015

Election year	State	Justice	Won =1, Lost = 0	Race/Ethnicity	Appointed prior to election (non- white judges only)	Party designation
2000	Louisiana	Bernadette Johnson	1	Black	No	D
2000	Alabama	John H. England, Jr.	0	Black	Yes	D
2000	Michigan	Robert Young, Jr.	1	Black	Yes	R
2000	North Carolina	Henry Frye	0	Black	Yes	
2000	Alabama	Ralph Cook	0	Black	No	D
2000	Georgia	George Carley	1	White		
2000	Georgia	Hugh Thompson	1	White		
2000	Georgia	Carol Hunstein	1	White		
2000	Idaho	Cathy Silak	0	White		
2000	Illinois	Louis Rathje	0	White		R
2000	Kentucky	James Keller	1	White		
2000	Michigan	Stephen Markman	1	White		R
2000	Michigan	Clifford Taylor	1	White		R
2000	Minnesota	Russell Anderson	1	White		
2000	Minnesota	James Gilbert	1	White		
2000	Minnesota	Kathleen Blatz	1	White		
2000	Minnesota	Joan Lancaster	1	White		
2000	Mississippi	Oliver Diaz	1	White		
2000	Mississippi	Kay Cobb	1	White		
2000	Mississippi	Lenore Prather	0	White		
2000	Nevada	Robert Rose	1	White		
2000	Nevada	Myron Leavitt	1	White		
2000	Nevada	Nancy Becker	1	White		
2000	North Carolina	Freeman Franklin	0	White		D
2000	Ohio	Alice Resnick	1	White		D
2000	Ohio	Deborah Cook	1	White		R
2000	Oregon	Wallace Carson	1	White		
2000	Oregon	Robert Durham	1	White		
2000	Texas	Priscilla Owen	1	White		R
2000	Texas	Nathan Hecht	1	White		R
2000	Washington	Bobbe Bridge	1	White		
2000	West Virginia	Robin Davis	1	White		D

Election year	State	Justice	Won =1, Lost = 0	Race/Ethnicity	Appointed prior to election (non- white judges only)	Party designation
2000	Wisconsin	Diane Sykes	1	White		
2001	Wisconsin	David Prosser	1	White		
2002	Georgia	Robert Benham	1	Black	No	
2002	Michigan	Robert Young, Jr.	1	Black	No	R
2002	North Carolina	G.K. Butterfield	0	Black	Yes	
2002	Texas	Wallace Jefferson	1	Black	Yes	R
2002	Texas	Xavier Rodriguez	0	Latino	Yes	R
2002	Alabama	Harold See	1	White		R
2002	Arkansas	Jim Glaze	1	White		
2002	Georgia	Harris Hines	1	White		
2002	Georgia	Norman Fletcher	1	White		
2002	Idaho	Gerald Schroeder	1	White		
2002	Idaho	Linda Trout	1	White		
2002	Kentucky	Joseph Lambert	1	White		
2002	Michigan	Elizabeth Weaver	1	White		D
2002	Minnesota	Paul Anderson	1	White		
2002	Mississippi	Charles McRae	0	White		
2002	Montana	James Rice	1	White		
2002	Nevada	Bill Maupin	1	White		
2002	North Carolina	Robert Orr	1	White		
2002	Ohio	Evelyn L. Stratton	1	White		R
2002	Oregon	Thomas Balmer	1	White		
2002	Texas	Thomas Phillips	1	White		R
2002	Washington	Charles Johnson	1	White		
2002	Washington	Bobbe Bridge	1	White		
2003	Wisconsin	Patience Roggensack	1	White		
2004	Minnesota	Alan Page	1	Black	No	
2004	Georgia	Leah Sears	1	Black	Yes	
2004	Mississippi	James Graves	1	Black	Yes	
2004	Alabama	Jean Brown	0	White		R
2004	Arkansas	Jim Hannah	1	White		
2004	Idaho	Roger Burdick	1	White		
2004	Kentucky	Janet Stumbo	0	White		
2004	Louisiana	Jeffrey Victory	1	White		R

Election year	State	Justice	Won =1, Lost = 0	Race/Ethnicity	Appointed prior to election (non- white judges only)	Party designation
2004	Michigan	Stephen Markman	1	White		R
2004	Michigan	Marylin Kelly	1	White		D
2004	Minnesota	Samuel Hansen	1	White		
2004	Minnesota	Helen Meyer	1	White		
2004	Mississippi	Michael Randolph	1	White		
2004	Mississippi	George Carlson	1	White		
2004	Mississippi	William Waller	1	White		
2004	Montana	James Nelson	1	White		
2004	North Carolina	Sarah Parker	1	White		
2004	Ohio	Terrence O'Donnell	1	White		R
2004	Ohio	Thomas Moyer	1	White		R
2004	Ohio	Paul Pfeifer	1	White		R
2004	Oregon	Michael Gillette	1	White		
2004	Oregon	Rives Kistler	1	White		
2004	Oregon	William Riggs	1	White		
2004	Texas	Stephen Smith	0	White		R
2004	Texas	Scott Brister	1	White		R
2004	Texas	Harriett O'Neill	1	White		R
2004	Washington	Barbara Madsen	1	White		
2004	Washington	Richard Sanders	1	White		
2004	West Virginia	Warren McGraw	0	White		D
2005	Wisconsin	Ann Bradley	1	White		
2006	Kentucky	William McAnulty	1	Black	Yes	
2006	Nevada	Michael Douglas	1	Black	Yes	D
2006	North Carolina	Patricia Timmons-Goodson	1	Black	Yes	
2006	Texas	Wallace Jefferson	1	Black	No	R
2006	Oregon	Paul De Muniz	1	Latino	No	
2006	Texas	David Medina	1	Latino	Yes	R
2006	Alabama	Drayton Nabers	0	White		R
2006	Alabama	Champ Lyons	1	White		R
2006	Alabama	Lyn Stuart	1	White		R
2006	Alabama	Thomas Woodall	1	White		R
2006	Arkansas	Donald Corbin	1	White		
2006	Arkansas	Annabelle Imber	1	White		

Election year	State	Justice	Won =1, Lost = 0	Race/Ethnicity	Appointed prior to election (non- white judges only)	Party designation
2006	Arkansas	Robert Brown	1	White		
2006	Georgia	George Carley	1	White		
2006	Georgia	Hugh Thompson	1	White		
2006	Georgia	Carol Hunstein	1	White		
2006	Georgia	Harold Melton	1	White		
2006	Idaho	Daniel Eismann	1	White		
2006	Kentucky	John Minton, Jr.	1	White		
2006	Kentucky	John Roach	0	White		
2006	Louisiana	Chet Traylor	1	White		R
2006	Louisiana	Jeannette Knoll	1	White		D
2006	Michigan	Michael Cavanagh	1	White		D
2006	Michigan	Maura Corrigan	1	White		R
2006	Minnesota	Barry Anderson	1	White		
2006	Montana	James Rice	1	White		
2006	Nevada	Nancy Becker	0	White		
2006	North Carolina	Mark Martin	1	White		
2006	North Carolina	Sarah Parker	1	White		
2006	North Dakota	Dale Sandstrom	1	White		
2006	Ohio	Terrence O'Donnell	1	White		R
2006	Oregon	Robert Durham	1	White		
2006	Texas	Nathan Hecht	1	White		R
2006	Texas	Don Willett	1	White		R
2006	Texas	Phil Johnson	1	White		R
2006	Washington	Gerry Alexander	1	White		
2006	Washington	Thomas Chambers	1	White		
2006	Washington	Susan Owens	1	White		
2006	Wisconsin	Patrick Crooks	1	White		
2007	Wisconsin	Annette Ziegler	1	White		
2008	Georgia	Robert Benham	1	Black	No	
2008	Texas	Wallace Jefferson	1	Black	No	R
2008	Texas	Dale Wainwright	1	Black	No	R
2008	Wisconsin	Louis Butler	0	Black	Yes	
2008	Arkansas	Jim Hannah	1	White		
2008	Arkansas	Paul Danielson	1	White		

Election year	State	Justice	Won =1, Lost = 0	Race/Ethnicity	Appointed prior to election (non- white judges only)	Party designation
2008	Georgia	Harris Hines	1	White		
2008	Idaho	Warren Jones	1	White		
2008	Idaho	Joel Horton	1	White		
2008	Illinois	Anne Burke	1	White		D
2008	Kentucky	Daniel Venters	1	White		
2008	Kentucky	Lisabeth Hughes Abramson	1	White		
2008	Kentucky	Mary C. Noble	1	White		
2008	Louisiana	Catherine Kimball	1	White		D
2008	Michigan	Clifford Taylor	0	White		R
2008	Minnesota	Paul H. Anderson	1	White		
2008	Minnesota	Lorie Skjerven Gildea	1	White		
2008	Mississippi	Charles Easley	0	White		
2008	Mississippi	Oliver Diaz	0	White		
2008	Mississippi	Ann Lamar	1	White		
2008	Mississippi	James Smith	0	White		
2008	Montana	Patricia O'Brien Cotter	1	White		
2008	Nevada	Mark Gibbons	1	White		R
2008	North Carolina	Robert Edmunds	1	White		
2008	Ohio	Maureen O'Connor	1	White		R
2008	Ohio	Evelyn L. Stratton	1	White		R
2008	Oregon	Thomas Balmer	1	White		
2008	Oregon	Martha Lee Walters	1	White		
2008	Texas	Phil Johnson	1	White		R
2008	Washington	Mary Fairhurst	1	White		
2008	Washington	Charles W. Johnson	1	White		
2008	Washington	Debra Stephens	1	White		
2008	West Virginia	Elliot Maynard	0	White		D
2009	Wisconsin	Shirley Abrahamson	1	White		
2010	Louisiana	Bernadette Johnson	1	Black	No	D
2010	Michigan	Robert P. Young, Jr.	1	Black	No	R
2010	Minnesota	Alan Page	1	Black	No	
2010	Texas	Eva Guzman	1	Latina	Yes	R
2010	Alabama	Michael Bolin	1	White		R
2010	Alabama	Tom Parker	1	White		R

Election year	State	Justice	Won =1, Lost = 0	Race/Ethnicity	Appointed prior to election (non- white judges only)	Party designation
2010	Georgia	David Nahmias	1	White		
2010	Idaho	Roger Burdick	1	White		
2010	Idaho	Jim Jones	1	White		
2010	Kentucky	Daniel Venters	1	White		
2010	Michigan	Alton Davis	0	White		D
2010	Minnesota	Helen Meyer	1	White		
2010	Minnesota	Christopher Dietzen	1	White		
2010	Mississippi	Jess Dickinson	1	White		
2010	Montana	Michael E. Wheat	1	White		
2010	Nevada	James Hardesty	1	White		D
2010	Nevada	Ron Parraguirre	1	White		R
2010	North Carolina	Edward Brady	0	White		
2010	Ohio	Paul Pfeifer	1	White		R
2010	Ohio	Judith Ann Lanzinger	1	White		R
2010	Ohio	Eric Brown	0	White		D
2010	Oregon	Rives Kistler	1	White		
2010	Oregon	Jack Landau	1	White		
2010	Texas	Paul Green	1	White		R
2010	Texas	Debra Lehrmann	1	White		R
2010	Washington	Richard Sanders	0	White		
2010	Washington	James Johnson	1	White		
2010	Washington	Barbara Madsen	1	White		
2010	West Virginia	Thomas E. McHugh	1	White		D
2011	Wisconsin	David T. Prosser	1	White		
2012	Nevada	Michael Douglas	1	Black	No	D
2012	Mississippi	Leslie King	1	Black	Yes	
2012	Ohio	Yvette McGee Brown	0	Black	Yes	D
2012	Texas	David Medina	0	Latino	No	R
2012	Washington	Steven Gonzalez	1	Latino	Yes	
2012	Alabama	Lyn Stuart	1	White		R
2012	Alabama	Glenn Murdock	1	White		R
2012	Alabama	James Allen Main	1	White		R
2012	Alabama	Charles Malone	0	White		R
2012	Georgia	Hugh Thompson	1	White		

Election year	State	Justice	Won =1, Lost = 0	Race/Ethnicity	Appointed prior to election (non- white judges only)	Party designation
2012	Georgia	Carol Hunstein	1	White		
2012	Georgia	Harold Melton	1	White		
2012	Idaho	Dan Eismann	1	White		
2012	Illinois	Rita Garman	1	White		R
2012	Illinois	Mary Jane Theis	1	White		D
2012	Kentucky	Will T. Scott	1	White		
2012	Louisiana	John L Weimer	1	White		D
2012	Michigan	Stephen Markman	1	White		R
2012	Michigan	Brian Zahra	1	White		R
2012	Minnesota	Barry Anderson	1	White		
2012	Minnesota	Lorie Gildea	1	White		
2012	Minnesota	David Stras	1	White		
2012	Mississippi	William Waller	1	White		
2012	Mississippi	Mike Randolph	1	White		
2012	Montana	Brian Morris	1	White		
2012	Nevada	Michael Cherry	1	White		D
2012	Nevada	Nancy Saitta	1	White		D
2012	North Carolina	Paul Martin Newby	1	White		
2012	North Dakota	Daniel Crothers	1	White		
2012	Ohio	Terrence O'Donnell	1	White		R
2012	Ohio	Robert Cupp	0	White		R
2012	Texas	Nathan Hecht	1	White		R
2012	Texas	Don Willett	1	White		R
2012	Washington	Susan Owens	1	White		
2012	West Virginia	Robin Jean Davis	1	White		D
2013	Wisconsin	Patience Roggensack	1	White		
2014	Washington	Mary Yu	1	Asian	Yes	
2014	Georgia	Robert Benham	1	Black	No	
2014	North Carolina	Cheri Beasley	1	Black	No	
2014	Minnesota	Wilhelmina Wright	1	Black	Yes	
2014	Mississippi	Leslie King	1	Black	Yes	
2014	Arkansas	Karen Baker	1	White		
2014	Georgia	Harris Hines	1	White		
2014	Georgia	Keith Blackwell	1	White		

Election year	State	Justice	Won =1, Lost = 0	Race/Ethnicity	Appointed prior to election (non- white judges only)	Party designation
2014	Idaho	Joel Horton	1	White		
2014	Idaho	Warren E. Jones	1	White		
2014	Kentucky	Bill Cunningham	1	White		
2014	Kentucky	John D. Minton, Jr.	1	White		
2014	Kentucky	Lisabeth Hughes Abramson	1	White		
2014	Kentucky	Michelle Keller	1	White		
2014	Michigan	Brian Zahra	1	White		R
2014	Michigan	David Viviano	1	White		R
2014	Minnesota	David Lillehaug	1	White		
2014	Mississippi	Mike Randolph	1	White		
2014	Mississippi	William Waller	1	White		
2014	Montana	James Rice	1	White		
2014	Nevada	Mark Gibbons	1	White		R
2014	Nevada	Kris Pickering	1	White		R
2014	North Carolina	Mark Martin	1	White		
2014	North Carolina	Robin Hudson	1	White		
2014	North Carolina	Robert Hunter	1	White		
2014	North Dakota	Gerald VandeWalle	1	White		
2014	Ohio	Sharon L. Kennedy	1	White		R
2014	Ohio	Judith French	1	White		R
2014	Oregon	Thomas Balmer	1	White		
2014	Oregon	Martha Walters	1	White		
2014	Texas	Nathan Hecht	1	White		R
2014	Texas	Phil Johnson	1	White		R
2014	Texas	Jeff Brown	1	White		R
2014	Texas	Jeff Boyd	1	White		R
2014	Washington	Charles W. Johnson	1	White		
2014	Washington	Mary Fairhurst	1	White		
2014	Washington	Debra Stephens	1	White		
2015	Wisconsin	Ann Bradley	1	White		

Source: See Table A2.

TABLE A2
Data on state supreme court justices' race and ethnicity

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