



LGBTQ Judges in the Federal Judiciary

A Series of Fact Sheets on the Lack of Diversity on the Bench

By Danielle Root

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Federal judges wield immense power. Each day, they make decisions that affect people's livelihoods, well-being, and fundamental rights. However, a recent report from the Center for American Progress demonstrates that this power is largely held by individuals who do not reflect the diversity of American society.¹

Overall, 80 percent of all sitting federal judges in the nation are white, compared with a U.S. population that is only 60 percent white. In addition, 73 percent of all sitting judges are male, while men make up slightly less than half of the population. Strikingly, there are only two sitting American Indian judges and no Muslim judges on the federal courts.

LGBTQ judges are also drastically underrepresented on the bench. The report uncovered several startling findings:²

- Those who self-identify as LGBTQ comprise fewer than 1 percent of sitting judges and only about 1.4 percent of active judges on the federal bench.³ To put this in perspective, people who self-identify as LGBTQ make up approximately 4.5 percent of the U.S. population.⁴
- The first federal judicial appointee who self-identified as LGBTQ—Judge Deborah A. Batts—was not appointed to the federal bench until 1994.⁵
- There are no federal judges who self-identify as transgender.
- There is only one openly LGBTQ federal circuit court judge, Judge Todd Michael Hughes, who serves on the U.S. Court of Appeals for the Federal Circuit.⁶
- Federal district court judges who self-identify as LGBTQ are concentrated in only a handful of states: A few openly LGBTQ judges preside over district courts in New York, with others serving on district courts in Pennsylvania, Michigan, Oregon, Illinois, Florida, and California.⁷
- Only two—fewer than 1.09 percent—of President Donald Trump's judicial nominees have self-identified as LGBTQ. Just one of those two nominees—Judge Mary Rowland—has been confirmed by the U.S. Senate.⁸ In comparison, former President Barack Obama appointed 10 federal judges who self-identified as LGBTQ.⁹
- An analysis by Lambda Legal found that among President Trump's judicial nominees, nearly one-third have anti-LGBTQ records.¹⁰



See also: [“Building a More Inclusive Federal Judiciary”](#) by Danielle Root, Jake Faleschini, and Grace Oyenubi

FIGURE 1

People who identify as LGBTQ are underrepresented on federal courts compared with their share of the U.S. population

Proportion of sitting federal judges who identify as LGBTQ compared with proportion of U.S. population that identifies as LGBTQ



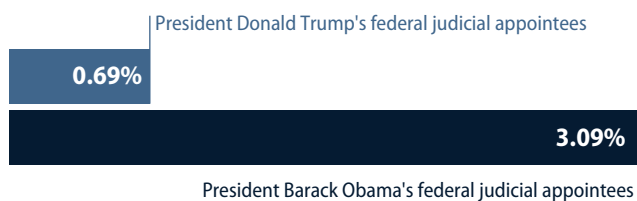
Note: President Trump's first LGBTQ appointee was confirmed by the Senate on July 31, 2019. The data reflect judges on Article III courts, designated in the U.S. Constitution, as of August 2019.

Sources: U.S. Federal Judicial Center, "Biographical Directory of Article III Federal Judges, 1789-present: Advanced Search Criteria," available at <https://www.fjc.gov/history/judges/search/advanced-search> (last accessed August 2019); Minority Corporate Counsel Association, "LGBT Article III Judges," available at <https://www.mcca.com/resources/reports/federal-judiciary/lgbt-judges/> (last accessed August 2019); Chris Johnson, "Mary Rowland is the first LGBT Trump judicial nominee confirmed by Senate," *Washington Blade*, August 5, 2019, available at <https://www.washingtonblade.com/2019/08/05/mary-rowland-is-first-lgbt-trump-judicial-nominee-confirmed-by-senate/>; Frank Newport, "In U.S., Estimate of LGBT Population Rises to 4.5%," Gallup, May 22, 2018, available at <https://news.gallup.com/poll/234863/estimate-lgbt-population-rises.aspx>.

FIGURE 2

President Trump has failed to prioritize appointing judges who self-identify as LGBTQ

Proportion of President Trump's federal judge appointees who self-identify as LGBTQ compared with President Obama's



Note: The data reflect judicial appointees to Article III courts, designated in the U.S. Constitution, as of August 2019.

Sources: U.S. Federal Judicial Center, "Biographical Directory of Article III Federal Judges, 1789-present: Advanced Search Criteria," available at <https://www.fjc.gov/history/judges/search/advanced-search> (last accessed August 2019); Minority Corporate Counsel Association, "LGBT Article III Judges," available at <https://www.mcca.com/resources/reports/federal-judiciary/lgbt-judges/> (last accessed August 2019); Mark Joseph Stern, "Obama's Most Enduring Gay Rights Achievement," *Slate*, June 17, 2014, available at <https://slate.com/human-interest/2014/06/openly-gay-federal-judges-are-obamas-most-enduring-gay-rights-achievement.html>; Chris Johnson, "Mary Rowland is first LGBT Trump judicial nominee confirmed by Senate," *Washington Blade*, August 5, 2019, available at <https://www.washingtonblade.com/2019/08/05/mary-rowland-is-first-lgbt-trump-judicial-nominee-confirmed-by-senate/>.

Diversity adds immense value to the judiciary. For parties to a case and the public at large, the court's legitimacy is strengthened when many of the decision-makers look like or share similar characteristics to them. This is particularly true today as federal courts are increasingly taking up cases pertaining to LGBTQ rights and matters of equality. However, while previous presidential administrations have made concerted efforts to diversify the bench, President Trump has nominated and appointed the least racially and ethnically diverse group of federal judges since the 1980s.

CAP's report on this lack of judicial diversity argues for a variety of reforms that would not only reverse this trend but also transform today's whitewashed judiciary into one that reflects the viewpoints and experiences of the populace it serves.

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Endnotes

- 1 Danielle Root, Jake Faleschini, and Grace Oyenubi, "Building a More Inclusive Federal Judiciary" (Washington: Center for American Progress, 2019), available at <https://www.americanprogress.org/issues/courts/reports/2019/10/03/475359/building-inclusive-federal-judiciary/>.
- 2 Most data outlined in this fact sheet reflect findings from CAP's recent report on judicial diversity, although some data points have been updated to reflect changes to the federal judiciary since August 2019. See *Ibid.*
- 3 Diversity in the federal judiciary can be measured by looking at "sitting" or "active" judges. The dataset for sitting judges includes those serving in senior status, which is a form of semi-retirement. Datasets for active judges, on the other hand, do not include senior status judges and only reflect judges who serve on the courts full time. Because judges in senior status can still hear cases, the authors have included them in this analysis. According to the federal courts' official website, senior status judges "typically handle about 15 percent of the federal courts' workload annually." See Root, Faleschini, and Oyenubi, "Building a More Inclusive Federal Judiciary"; U.S. Courts, "FAQs: Federal Judges, 5. What is a senior judge?," available at <https://www.uscourts.gov/faqs-federal-judges#faq-What-is-a-senior-judge?> (last accessed September 2019).
- 4 Root, Faleschini, and Oyenubi, "Building a More Inclusive Federal Judiciary."
- 5 *Ibid.*
- 6 Minority Corporate Counsel Association, "LGBT Article III Judges," available at <https://www.mcca.com/resources/reports/federal-judiciary/lgbt-judges/> (last accessed August 2019) Alliance for Justice, "Todd M. Hughes," available at <https://www.afj.org/our-work/nominees/todd-m-hughes> (last accessed October 2019).
- 7 Minority Corporate Counsel Association, "LGBT Article III Judges"; Federal Judicial Center, "Biographical Directory of Article III Federal Judges, 1789-Present: Advanced Search Criteria," available at <https://www.fjc.gov/history/judges/search/advanced-search> (last accessed October 2019).
- 8 Chris Johnson, "Mary Rowland is first LGBT Trump judicial nominee confirmed by Senate," *Washington Blade*, August 5, 2019, available at <https://www.washingtonblade.com/2019/08/05/mary-rowland-is-first-lgbt-trump-judicial-nominee-confirmed-by-senate/>.
- 9 Root, Faleschini, and Oyenubi, "Building a More Inclusive Federal Judiciary."
- 10 Lambda Legal, "Nearly One-Third of Trump's Judicial Nominees Have Anti-LGBT Records, Lambda Legal Reveals in New Analysis Documenting Record Speed with Which Trump Is Reshaping the Courts," Press release, December 20, 2017, available at https://www.lambdalegal.org/news/dc_20171220_nearly-one-third-of-judicial-noms. See also, Lambda Legal, "Stacking the Courts: The Fight Against Trump's Extremist Judicial Nominees," available at <https://www.lambdalegal.org/judicial-nominees> (last accessed October 2019).