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U.S. Circuit and District Court Judges: Profile of Select Characteristics

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Summary

This report addresses ongoing congressional interest in select characteristics of lower federal court judges. The analysis of the report focuses on demographic and other characteristics of active and senior U.S. circuit and district court judges who are currently serving on the federal bench. Consequently, the statistics provided in the report do not necessarily reflect all of a President's circuit or district court appointments during his time in office. A judge in active service has not taken senior status, retired, or resigned. A judge who has assumed senior status continues, on a part-time basis, to perform the duties of his or her office (which can include hearing cases).

As discussed below, “nontraditional” judges are those judges who belong to demographic groups from which, historically, individuals were not often selected, if at all, for federal judgeships. Specifically, for the purposes of this report, white women, non-white men, and non-white women are considered nontraditional judges.

Some of the report's findings include the following:

- As of March 7, 2014, the greatest percentage of active circuit court judges were appointed by President G.W. Bush (32.1%), followed by Presidents Obama (25.3%) and Clinton (25.3%). The greatest percentage of senior circuit court judges were appointed by President Reagan (33.3%).
- Of the active U.S. circuit court judges, 51.2% are white men, 25.3% are white women, 16.7% are non-white men, and 6.8% are non-white women. Altogether, 48.8% of active circuit court judges are nontraditional judges. In contrast, of senior circuit court judges, 80.7% are white men, 9.6% are white women, 8.8% are non-white men, and less than 1.0% are non-white women. Altogether, 19.3% of senior circuit court judges are nontraditional judges.
- After five years in office, President Obama has appointed the greatest percentage of nontraditional active U.S. circuit court judges currently sitting on the bench (34.2%), followed by Presidents Clinton (32.9%) and G.W. Bush (25.3%). Of senior circuit court judges, President Carter appointed the greatest percentage (54.5%).
- There is, however, variation in the percentage of active circuit court judges belonging to specific demographic groups that were appointed by particular Presidents. For example, of women serving as active circuit court judges as of March 7, 2014, Presidents G.W. Bush and Clinton tied for having appointed the greatest percentage (each with 30.8%).
- As of December 31, 2013, 32.5% of active circuit court judges were eligible, based on age and length of service as Article III judges, to assume senior status. Of those eligible for senior status, President Clinton appointed nearly half (47.2%). As of this writing, CRS has not calculated such statistics for active U.S. district court judges.
- The greatest percentage of active district court judges were appointed by President G.W. Bush (38.8%), followed by President Obama (29.7%). The greatest percentage of senior district court judges were appointed by President Reagan (29.2%).

- Of active U.S. district court judges, 52.7% are white men, 22.1% are white women, 15.4% are non-white men, and 9.8% are non-white women. Altogether, 47.3% of active district court judges are nontraditional judges. Of senior district court judges, 78.5% are white men, 11.0% are white women, 8.7% are non-white men, and 1.8% are non-white women. Altogether, 21.5% of senior district court judges are nontraditional judges.
- Of nontraditional active U.S. district court judges currently on the bench, President Obama has appointed the greatest percentage (38.6%), followed by Presidents G.W. Bush (28.8%) and Clinton (22.8%). Of senior district court judges, Presidents Clinton and Carter appointed the greatest percentages (48.9% and 22.3%, respectively).
- There is, however, variation in the percentage of active district court judges belonging to specific demographic groups that were appointed by particular Presidents. For example, of Hispanics serving as active district court judges, President G.W. Bush appointed the greatest percentage (42.6%).

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Introduction

This report provides a profile of select demographic characteristics of judges currently serving on U.S. courts of appeals and U.S. district courts.¹ The report also provides statistical information related to the percentage of circuit and district court judges appointed by particular Presidents (as well as by party of the appointing President).

U.S. Circuit Courts

Circuit courts take appeals from federal district court decisions and are also empowered to review the decisions of many administrative agencies. The court of appeals decision “usually will be the final word in [a] case, unless it sends the case back to the trial court for additional proceedings, or the parties ask the U.S. Supreme Court to review the case” (the Supreme Court, though, is not required to grant review).²

Altogether, 179 circuit court judgeships are currently authorized by law.³ These judgeships are distributed across 13 judicial circuits, 12 of which are geographic in nature (i.e., regional circuits comprised of specific groups of states).⁴ The smallest court is the First Circuit (comprised of Maine, Massachusetts, New Hampshire, Puerto Rico, and Rhode Island), with 6 judgeships, while the largest court is the Ninth Circuit (comprised of California, 8 other western states, and 2 U.S. territories), with 29 judgeships.

U.S. District Courts

U.S. district courts are the federal trial courts of general jurisdiction. Altogether, 673 U.S. district court judgeships as well as 4 territorial district court judgeships are currently authorized by law.⁵

¹ In this report, the U.S. courts of appeals are frequently referred to as “circuit courts” while judges serving on such courts are referred to as “circuit court judges.”

² “The Appeals Process,” Administrative Office of U.S. Courts, available at <http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/HowCourtsWork/TheAppealsProcess.aspx>.

³ Court of appeals and district court judgeships are created, or authorized, by legislation that must be enacted by Congress. Congress last authorized the creation of new circuit court judgeships in 1990 (P.L. 101-650, December 1, 1990). The legislation in 1990 authorized 11 new circuit court judgeships, including 4 new judgeships for the Fourth Circuit, 2 each for the Third and Tenth Circuits, and 1 apiece for the Fifth, Sixth, and Eighth Circuits. Legislation enacted in 2008 transferred an existing circuit court judgeship from the D.C. Circuit to the Ninth Circuit but did not create a new judgeship (P.L. 110-177, January 7, 2008). As for district courts, Congress last authorized the creation of new judgeships in 2002 (P.L. 107-273). The 2002 legislation authorized eight new permanent judgeships for district courts located in California, North Carolina, and Texas, and seven new temporary judgeships for district courts located in Alabama, Arizona, California, Florida, New Mexico, North Carolina, and Texas. Congress also extended a temporary judgeship for a district court in Ohio and converted four temporary judgeships to permanent judgeships for district courts in Illinois, New York, and Virginia.

⁴ A list of the states that comprise each circuit is set forth in Section 41 of Title 28 of the U.S. Code. One additional circuit, the U.S. Court of Appeals for the Federal Circuit, has nationwide jurisdiction and hears certain specialized legal claims related to international trade, government contracts, patents, trademarks, certain money claims against the United States government, federal personnel, veterans’ benefits, and public safety officers’ benefits claims.

⁵ The statistics provided in this report do not include the relatively rare nominations made by a President to territorial district court judgeships, which were established by Congress pursuant to its authority to govern the territories under Article IV of the Constitution. Judges confirmed to these courts serve 10-year terms (rather than “during good (continued...)”).

The 673 U.S. district court judgeships are distributed across 91 district courts (89 are located in the 50 states, plus one court in the District of Columbia, and one in the Commonwealth of Puerto Rico).⁶ Congress has authorized between 1 and 28 judgeships for each district court. The Eastern District of Oklahoma has 1 judgeship (the fewest among Article III district courts), while the Southern District of New York and Central District of California each have 28 judgeships (the most among Article III district courts).⁷

Congressional Interest in Judicial Diversity

The demographic characteristics of U.S. circuit and district court judges are of ongoing interest to Congress. Such interest is demonstrated especially at the time circuit and district court nominations are considered by the Senate.⁸ For example, floor statements by Senators in support of circuit or district court nominees have frequently emphasized the particular demographic characteristics of nominees that would enhance the diversity of the federal judiciary. Recent examples of such statements include the following:

- A Senator stating that he “was thrilled and honored to be part of this historic moment” for the state he represents and highlighting that a district court nominee for the Northern District of Mississippi, if confirmed, would “be the first female African-American district judge” in Mississippi. The Senator also noted that the nominee “was the second African-American to graduate from the School of Architecture at Mississippi State University and the first member of her family to earn a law degree.”⁹
- A Senator stating that the confirmation of a female nominee to the D.C. Circuit would “be another step toward expanding the diversity of our Federal bench” and noting that “about half of all law graduates today are women, and we have a tremendous number of qualified women in the country who are serving as lawyers. So they ought to be represented on the Court.”¹⁰

(...continued)

Behaviour”). Like Article III courts, however, territorial courts hear cases arising out of federal law, their decisions may be appealed to a U.S. circuit court of appeals, and their judicial nominations are referred to the Senate Judiciary Committee.

⁶ The territorial district court judgeships are authorized for district courts located in the U.S. Virgin Islands, Guam, and the Northern Mariana Islands.

⁷ These figures do not include “roving” judgeships, i.e., judgeships shared by two or more federal district courts.

⁸ Although Members of the U.S. House of Representatives do not have a formal constitutional role in the confirmation of federal judges, the demographic characteristics of judicial nominees are also of interest to Members of the House. See, for example, Rep. Mike Honda, “Asian Pacific American Heritage Month,” Remarks in the House, *Congressional Record*, daily edition, May 19, 2010, p. H3652 (stating that the President has “demonstrated commitment to judicial diversity through the nomination of high caliber Asian American and other minority jurists at all levels of the Federal bench”). See also Rep. Charlie Gonzalez, “Nomination of Miguel Estrada,” Remarks in the House, *Congressional Record*, daily edition, February 13, 2003, p. H685 (stating that the Congressional Hispanic Caucus “will actively work to identify and recommend qualified Hispanic candidates to fill Federal court vacancies”). Additionally, the Congressional Black Caucus recently released a letter to urge President Obama to appoint a greater number of African American judges, particularly to certain judicial districts (e.g., the three judicial districts located in Alabama). For the text of the letter, see <https://www.documentcloud.org/documents/1009668-cbc-judges-letter-to-the-president.html>.

⁹ Sen. Roger Wicker, “Executive Session,” Remarks in the Senate, *Congressional Record*, daily edition, November 4, 2013, p. S7791.

¹⁰ Sen. Barbara Boxer, “Executive Session,” Remarks in the Senate, *Congressional Record*, daily edition, December 6, (continued...)

- A Senator noting that it was a “big day” for her state and its “legal history” because the Senate was considering the nomination of “the first woman to be nominated for United States district court judge” for the District of Alaska. Consequently, the Senator stated that it was “a privilege to speak in support of her nomination ...”¹¹
- A Senator noting that a nominee to the Sixth Circuit Court of Appeals “became the first African-American female judge in the history” of Tennessee as well as that state’s “first African-American female district court judge,” serving “in that capacity for 15 years.” The Senator also noted that it was fitting that the nominee, “a pioneer in so many ways ..., will be the first nomination for the federal bench that [the Senate] will consider after the opening of the Martin Luther King Memorial in the Nation’s Capital.”¹²
- A Senator stating that a Hispanic nominee to the U.S. Court of Appeals for the Federal Circuit would “bring much-needed diversity to the Federal circuit” and noting that the nominee had, throughout his career, “shown a strong commitment to diversity and racial equality, not only through his service to the Hispanic community, but also through his service” with the American Bar Association. The Senator also noted that the nominee “would be the first Latino to serve on the Federal circuit in its history” and that with the nominee’s confirmation, “the Senate has another opportunity to further increase the diversity of the Federal bench.”¹³
- A Senator noting that a nominee is “a man who grew up in less than ideal circumstances, ... has been a prosecutor, has been a defender, has been an advocate for those who are less fortunate, and will be the first African American ever to be on the Tenth Circuit Court of Appeals.” The Senator stated that the nominee “also has life experiences that will make him more valuable on the court in terms of his compassion. He has experienced discrimination” as an African American man and is “someone of whom we in our country should be proud, who recognizes the diversity of our country ...”¹⁴

In light of ongoing congressional interest in the demographic characteristics of those nominated to circuit and district court judgeships, this report seeks to inform Congress by providing statistics related to select demographic characteristics of active and senior judges currently serving on U.S. circuit courts of appeals and district courts.

Active circuit and district court judges are those individuals who are appointed, respectively, to one of the 179 circuit court judgeships or to one of the 673 district court judgeships currently

(...continued)

2011, p.S8359.

¹¹ Sen. Lisa Murkowski, “Executive Session,” Remarks in the Senate, *Congressional Record*, daily edition, November 15, 2011, p.S7426.

¹² Sen. Lamar Alexander, “Donald Nomination,” Remarks in the Senate, *Congressional Record*, daily edition, September 6, 2011, p.S5322.

¹³ Sen. Ben Cardin, “Executive Session,” Remarks in the Senate, *Congressional Record*, daily edition, April 4, 2011, p.S2079.

¹⁴ Sen. Tom Coburn, “Executive Session,” Remarks in the Senate, *Congressional Record*, daily edition, July 25, 2006, p.S8140, S8150.

authorized by law. Consequently, a judge in active service is one who has not taken senior status, retired, or resigned. Senior status judges are those judges who have retired from full-time service but continue, on a part-time basis, to hear cases or perform other duties related to judicial administration.¹⁵ According to the Administrative Office of U.S. Courts, senior judges typically handle about 15% of the federal courts' annual workload.¹⁶

Caveats

Note that the statistics included in this report are based upon the demographic characteristics of individuals serving, as of March 7, 2014, as circuit or district court judges, and, consequently, do not include a President's circuit or district court appointees who are no longer serving as either active or senior status judges. Consequently, the statistics reported below do not necessarily reflect all of a President's circuit or district court appointments during his tenure in office.¹⁷

Additionally, the statistics presented below do not include those individuals whose nominations to circuit or district court judgeships were unsuccessful or whose nominations are currently pending in the Senate.¹⁸

As of March 7, 2014, there were 162 active circuit court judges and 17 vacant circuit court judgeships (for a total of 179 circuit court judgeships). The denominator used for the statistics presented throughout this report is based upon the number of active circuit court judges and does not include, as of this writing, the 17 vacant judgeships. Additionally, as of March 7, 2014, there were 114 senior-status U.S. circuit court judges. Consequently, this is the denominator used throughout this report for statistics related to senior circuit court judges.

Similarly, as of March 7, 2014, there were 603 active district court judges and 70 vacant district court judgeships (for a total of 673 district court judgeships). The denominator used for the statistics presented throughout this report is based upon the number of active district court judges and does not include, as of this writing, the 70 vacant judgeships. Additionally, as of March 7, 2014, there were 438 senior district court judges. Consequently, this is the denominator used throughout this report for statistics related to senior district court judges.

Note that, because many individual circuit and district courts have a relatively small number of judgeships, relatively small changes in the demographic characteristics of judges sitting on a particular court can produce relatively large swings in many of the statistics reported below. The First Circuit, for example, has only six authorized judgeships. Consequently, a change in the sex or racial background of one or more judges can produce large changes in statistics related to the demographic characteristics of judges serving on that particular court.

¹⁵ Senior status eligibility is based upon a judge's age as well as his or her length of service as an Article III judge. Specifically, beginning at age 65, a judge may retire from office or take senior status after performing 15 years of active service as an Article III judge. A sliding scale of increasing age and decreasing service results in eligibility for retirement compensation at age 70 with a minimum 10 years of service.

¹⁶ "Federal Judges," Administrative Office of U.S. Courts, available at <http://www.uscourts.gov/Common/FAQS.aspx>. The requirements that an active judge must meet in order to assume senior status are set forth in Section 371(c) of Title 28 of the U.S. Code.

¹⁷ Such statistics are, however, available from CRS upon request.

¹⁸ As of this writing, CRS does not track or have available demographic data for nominees whose nominations were unsuccessful or whose nominations are currently pending before the Senate.

The statistics presented and discussed below are current as of March 7, 2014, and were compiled using information provided by the *Biographical Directory of Federal Judges*.¹⁹ This report will be updated annually at the beginning of each calendar year by CRS.

By Appointing President

This section provides statistics related to the percentage of circuit and district court judges who are currently sitting on the bench and who were appointed by a particular President. As stated above, the statistics included in this report are based upon individuals serving, as of March 7, 2014, as circuit or district court judges and, thus, do not include a President's circuit or district court appointees who are no longer serving as either active or senior status judges.

U.S. Circuit Court Judges

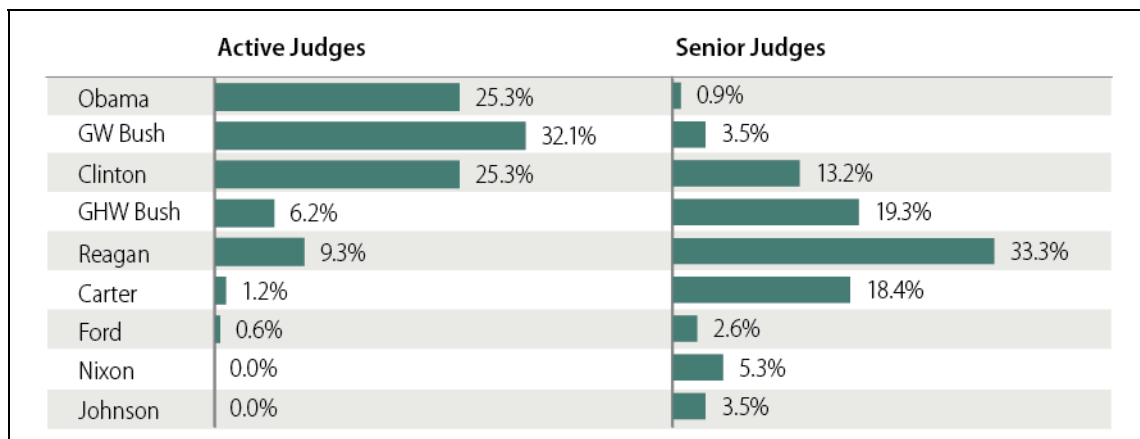
As shown by **Figure 1**, the greatest percentage of active circuit court judges currently serving on the bench were appointed by President G.W. Bush (32.1%), followed by Presidents Obama and Clinton (each with 25.3%).²⁰ Other Presidents with active circuit court appointees include Presidents G.H.W. Bush (6.2%), Reagan (9.3%), Carter (1.2%), and Ford (0.6%).²¹

¹⁹ Consequently, the data analyzed in this report are limited to information provided by the *Directory*. The *Directory* is maintained by the Administrative Office of U.S. Courts and is available online at <http://www.uscourts.gov/JudgesAndJudgeships/BiographicalDirectoryOfJudges.aspx>.

²⁰ For the purposes of this report, if a judge received a recess appointment from one President and was subsequently nominated to the same position later by a different President (and confirmed by the Senate), the judge is counted as a nominee of the President making the initial recess appointment (and, thus, the judge is not double counted as an appointee of two Presidents). Throughout this report, for example, Roger L. Gregory is counted as an appointee of President Clinton. Judge Gregory received a recess appointment to the Fourth Circuit by President Clinton on December 27, 2000. He was subsequently nominated to the same position by President G.W. Bush on May 9, 2001, and confirmed by the Senate on July 20, 2001.

²¹ The raw numbers, in descending order from greatest to fewest number of active U.S. circuit court appointees, for the 7 Presidents are 52 (G.W. Bush), 41 (Obama), 41 (Clinton), 15 (Reagan), 10 (G.H.W. Bush), 2 (Carter), and 1 (Ford).

Figure 1. Percentage of Active and Senior U.S. Circuit Court Judges by Appointing President
(as of March 7, 2014)



Source: CRS analysis of data provided by the Administrative Office of U.S. Courts.

Notes: This figure shows, as of March 7, 2014, the percentage of active and senior U.S. circuit court judges by appointing President.

Figure 1 also shows that, for senior status judges currently serving on the bench, President Reagan appointed the greatest percentage (33.3%). Other Presidents with senior circuit court appointees currently serving include G.H.W. Bush (19.3%), Carter (18.4%), Clinton (13.2%), Nixon (5.3%), G.W. Bush (3.5%), Johnson (3.5%), Ford (2.6%), and Obama (0.9%).²²

Note that, given the age and service requirements for active judges to assume senior status, more recent Presidents will have fewer, if any, judges serving as senior judges. For example, as of March 7, 2014, President Obama has had only one of his judicial appointees assume senior status.²³

U.S. District Court Judges

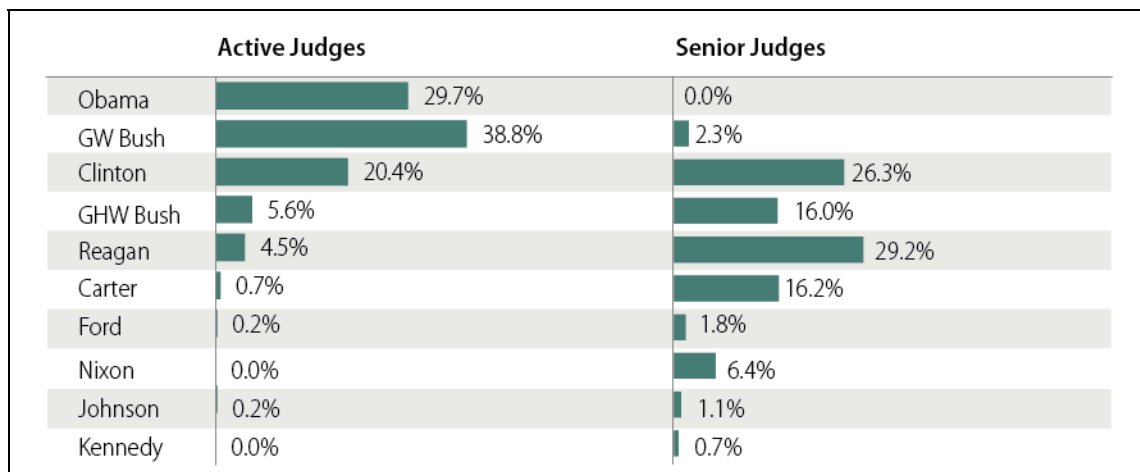
As shown in **Figure 2**, President G.W. Bush has appointed the greatest percentage of active district court judges, 38.8%. Presidents Obama and Clinton have appointed 29.7% and 20.4%, respectively. Other Presidents with active district court appointees include Presidents G. H. W. Bush (5.6%), Reagan (4.5%), Carter (0.7%), Ford (0.2%), and Johnson (0.2%).²⁴

²² The raw numbers, in descending order from greatest to fewest number of senior U.S. circuit court appointees, for the 8 Presidents are 38 (Reagan), 22 (G.H.W. Bush), 21 (Carter), 15 (Clinton), 6 (Nixon), 4 (G.W. Bush), 4 (Johnson), 3 (Ford), and 1 (Obama).

²³ Judge Andre M. Davis, an Obama appointee to the Fourth Circuit, took senior status on February 28, 2014. Judge Davis is the first Obama judicial appointee, whether to a circuit or district court, who has assumed senior status. Prior to his service on the Fourth Circuit, Judge Davis served for over 14 years as a district court judge for the U.S. District Court for the District of Maryland.

²⁴ The raw numbers, in descending order from greatest to fewest number of active U.S. district court appointees, for the 8 Presidents are 234 (G.W. Bush), 179 (Obama), 123 (Clinton), 34 (G.H.W. Bush), 27 (Reagan), 4 (Carter), 1 (Ford), and 1 (Johnson).

Figure 2. Percentage of Active and Senior U.S. District Court Judges by Appointing President
(as of March 7, 2014)



Source: CRS analysis of data provided by the Administrative Office of U.S. Courts.

Notes: This figure shows, as of March 7, 2014, the percentage of active and senior U.S. district court judges by appointing President.

As for district court judges currently serving as senior status judges, the greatest percentage were appointed by President Reagan (29.2%), followed by President Clinton (26.3%). Other Presidents with appointees currently serving as senior district court judges include Presidents Carter (16.2%), G.H.W. Bush (16.0%), Nixon (6.4%), G.W. Bush (2.3%), Ford (1.8%), Johnson (1.1%), and Kennedy (0.7%).²⁵

By Party of Appointing President

This section provides statistics related to the percentage of active and senior U.S. circuit and district court judges appointed by Democratic and Republican Presidents. Note that it is an open question as to whether there is a relationship (and, if so, the strength of such a relationship) between the party of an appointing President (which might serve as a proxy for the partisan or ideological leanings of a President's judicial appointees) and judicial outcomes.²⁶ At least one circuit court judge has argued that such a relationship is not as strong as might be assumed,

²⁵ The raw numbers, in descending order from greatest to fewest number of senior U.S. district court appointees, for the 9 Presidents are 128 (Reagan), 115 (Clinton), 71 (Carter), 70 (G.H.W. Bush), 28 (Nixon), 10 (G.W. Bush), 8 (Ford), 5 (Johnson), and 3 (Kennedy).

²⁶ One study, for example, found no statistically significant differences in the voting patterns of Democratic and Republican circuit court appointees on cases related to criminal appeals, takings of private property, punitive damage awards, standing to sue, and Commerce Clause challenges to federal regulations. For other types of cases, however, there was "striking evidence" of such a relationship. Such cases involved campaign finance legislation, disability discrimination, affirmative action, sex discrimination, environmental protection, and labor law. See Cass R. Sunstein et al., *Are Judges Political? An Empirical Analysis of the Federal Judiciary* (Washington: Brookings Institution, 2006), pp.47-54, 147-148. Another scholar argues that it is "unlikely that judicial decisionmaking is systematically political in a partisan sense. Federal judges lack the obvious incentive to promote their parties' interests, and regardless, they have few opportunities to do so." Bradley W. Joondeph, "The Many Meanings of 'Politics' in Judicial Decision Making," *University of Missouri-Kansas City (UMKC) Law Review*, vol. 77, p.356 (2008).

arguing that judges “are much less Democratic and Republican than their counterparts in elected officialdom, often to the chagrin of appointing Presidents. Appointment to life-tenured positions liberates federal judges at all levels from partisan commitments.”²⁷

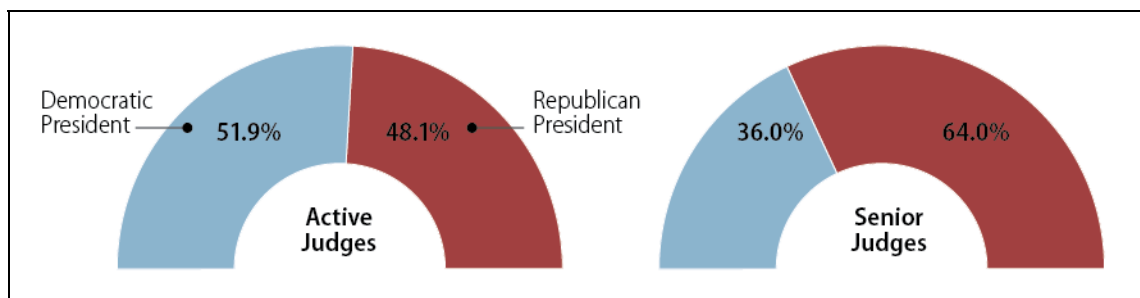
As stated above, active circuit and district court judges are those individuals who are appointed, respectively, to one of the 179 circuit court judgeships or to one of the 673 district court judgeships currently authorized by law. Consequently, a judge in active service is one who has not taken senior status, retired, or resigned. Senior status judges are those judges who have retired from full-time service but continue, on a part-time basis, to hear cases or perform other duties related to judicial administration.

U.S. Circuit Court Judges

Figure 3 displays the percentage of active and senior U.S. circuit court judges by party of the appointing President. For active circuit court judges, Democratic Presidents have appointed 51.9%, while Republican Presidents have appointed 48.1%. In contrast, for senior status judges, Democratic Presidents have appointed 36.0% and Republican Presidents have appointed 64.0%.²⁸ Of active circuit court judges, the two most recent Democratic Presidents (Clinton and Obama) appointed 50.6%, while of current senior status judges, Republican Presidents G.H.W. Bush and Reagan appointed 52.6%.

Figure 3. Percentage of Active and Senior U.S. Circuit Court Judges by Party of Appointing President

(as of March 7, 2014)



Source: CRS analysis of data provided by the Administrative Office of U.S. Courts.

Notes: This figure shows, as of March 7, 2014, the percentage of active and senior U.S. circuit court judges appointed by Democratic and Republican Presidents.

There is variation across judicial circuits on the percentage of active circuit court judges appointed by Democratic or Republican Presidents.²⁹ For example, Democratic Presidents have appointed a majority of active circuit court judges currently serving in eight circuits (the First, Second, Third, Fourth, Ninth, Eleventh, D.C., and Federal Circuits). Republican Presidents have

²⁷ Judge Richard A. Posner, “Foreword: A Political Court,” *Harvard Law Review*, vol. 119, p.75 (2005).

²⁸ Of active U.S. circuit court judges, Democratic Presidents have appointed 84, while Republican Presidents have appointed 78. For senior U.S. circuit court judges, Democratic Presidents have appointed 41, while Republican Presidents have appointed 73.

²⁹ These statistics are based upon the number of judgeships, as of March 7, 2014, with active judges and do not include vacant judgeships within a circuit.

appointed a majority of active circuit judges in four (the Fifth, Sixth, Seventh, and Eighth Circuits).³⁰

When senior judges are included, however, Democratic Presidents have appointed a majority of *sitting* circuit court judges (i.e., a majority of active and senior judges combined) in three circuits rather than eight—the Second, Fourth, and Ninth Circuits—while Republican Presidents have appointed a majority of sitting circuit court judges in 9 of the 10 remaining circuits (the D.C., First, Third, Fifth, Sixth, Seventh, Eighth, Tenth, and Eleventh Circuits). When considering all sitting circuit court judges, the Federal Circuit has an equal number of Democratic and Republican appointees.³¹

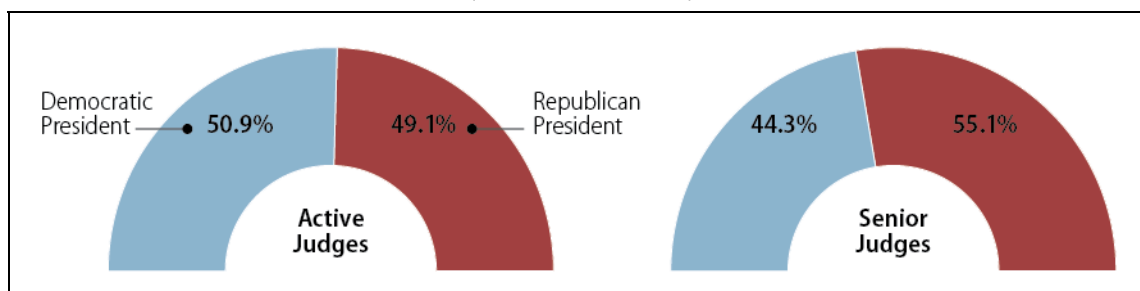
U.S. District Court Judges

As shown by **Figure 4**, of active district court judges, Democratic Presidents have appointed 50.9%, while Republican Presidents have appointed 49.1%. Of district court judges who are currently serving as senior judges, Democratic Presidents appointed 44.3% and Republican Presidents appointed 55.1%.³²

CRS has not, as of this writing, calculated the percentage of active (or senior) district court judges appointed by Democratic or Republican Presidents in each of the 91 judicial districts. There is, however, variation across the districts. Democratic Presidents, for example, appointed 13 active judges to the Northern District of California, while Republican Presidents appointed 1 judge. In contrast, Republican Presidents appointed 8 active judges to the Northern District of Texas, while Democratic Presidents appointed 3 judges.

Figure 4. Percentage of Active and Senior U.S. District Court Judges by Party of Appointing President

(as of March 7, 2014)



Source: CRS analysis of data provided by the Administrative Office of U.S. Courts.

Notes: This figure shows, as of March 7, 2014, the percentage of active and senior U.S. district court judges appointed by Democratic and Republican Presidents.

³⁰ As of this writing, Democratic and Republican Presidents have appointed the same percentage of active judges to the Tenth Circuit (comprised of Colorado, Kansas, New Mexico, Oklahoma, Utah, and Wyoming).

³¹ Data related to the number of sitting judges by circuit and by party of the appointing President are available from the author upon request.

³² Of active U.S. district court judges, Democratic Presidents have appointed 307, while Republican Presidents appointed 296. Of senior U.S. district court judges, Democratic Presidents appointed 194, while Republican Presidents appointed 244.

Demographic Characteristics

This section provides statistics related to select demographic characteristics of active and senior U.S. circuit and district court judges.³³ Additionally, this section provides statistics related to the age and length of service of active U.S. circuit court judges, as well as identifies the percentage of active circuit judges who are eligible to take senior status.³⁴

As discussed above, the demographic characteristics of judges and judicial nominees have been of ongoing interest to Congress. Additionally, scholars and others have expressed interest in the demographic characteristics of federal judges. Some argue, for example, that those serving as public officials in government should “stand for others by being sufficiently like them.”³⁵ The emphasis on having government officials reflect the demographic characteristics of the nation or community they serve is referred to as “descriptive representation.”

According to some scholars, descriptive representation is important because, symbolically, it enhances the legitimacy of government and “signals to underrepresented groups that ‘certain features of one’s identity do not mark one as less able to govern.’”³⁶ Additionally, “a descriptive representative may serve as a role model who stands as a symbol to others in her group that they too can achieve success at the highest echelons of government.”³⁷ Critics of descriptive representation, however, “contend that minority and gender groups are not necessarily served by leaders who are descriptively representative of them ... Others argue that descriptive representation incorrectly assumes that all members of a single group are alike.”³⁸

³³ The demographic characteristics analyzed in this section are limited to the information provided in the *Biographical Directory of Federal Judges*. Consequently, this section does not provide a discussion of other demographic characteristics that might nonetheless be of interest to Congress. The analysis in the report, for example, does not include the sexual orientation of circuit and district court judges. Note, however, that President Obama has appointed the first openly gay individual to a circuit court judgeship. Todd M. Hughes was nominated by President Obama to the Federal Circuit on February 7, 2013, and confirmed by the Senate on September 24, 2013. See Juliet Eilperin, “Senate confirms Todd M. Hughes as first openly gay federal appeals judge,” *Washington Post*, September 24, 2013, online at http://www.washingtonpost.com/politics/senate-confirms-todd-m-hughes-as-first-openly-gay-federal-appeals-judge/2013/09/24/c63c25fc-252b-11e3-ad0d-b7c8d2a594b9_story.html. Deborah A. Batts was the first openly gay district court appointee. Judge Batts was nominated to the U.S. District Court for the Southern District of New York by President Clinton on January 27, 1994, and confirmed by the Senate on May 6, 1994. See <http://www.politico.com/story/2014/01/president-obama-nominates-black-lesbian-judge-102277.html>.

³⁴ Such statistics for U.S. district court judges have not, as of this writing, been calculated by CRS.

³⁵ Hanna F. Pitkin, *The Concept of Representation* (Berkeley, CA: University of California Press, 1967), p. 80 (hereafter Pitkin, *Representation*).

³⁶ Nancy Scherer, “Diversifying the Federal Bench: Is Universal Legitimacy for the U.S. Justice System Possible?,” *Northwestern University Law Review*, vol. 105, no. 2 (2011), p. 598 (quoting Jane Mansbridge, “Should Blacks Represent Blacks and Women Represent Women? A Contingent ‘Yes,’” *Journal of Politics*, vol. 61, (1999), p. 651) (hereafter Scherer, “Diversifying the Federal Bench”).

³⁷ *Ibid.* (citing Edward M. Chen, “The Judiciary, Diversity, and Justice for All,” *California Law Review*, vol. 91 (2003), pp. 1109, 1116; Sylvia R. Lazos Vargas, “Only Skin Deep?: The Cost of Partisan Politics on Minority Diversity of the Federal Bench,” *Indiana Law Journal*, vol. 83 (2008), pp. 1423, 1430-31).

³⁸ *Ibid.*, p. 599 (citing Carol M. Swain, *Black Faces, Black Interests: The Representation of African Americans in Congress* (Lanham, MD: University Press of America, 2006), p. 5; Suzanne Dovi, “Preferable Descriptive Representatives: Will Just Any Woman, Black, or Latino Do?,” *American Political Science Review*, vol. 96 (2002), pp. 729, 740).

Empirical studies of descriptive representation have most often involved Congress.³⁹ One scholar, however, has argued that “descriptive representation is even *more* critical in the courts than it is in the elected branches [since] ‘judges have a more direct and irrevocable impact in the lives of many Americans than local or even national legislators.’”⁴⁰

Scholars have also analyzed representation in terms of public officials “acting for others, an activity in behalf of, in the interest of, as the agent of, someone else.”⁴¹ Such an approach to understanding representation focuses on the official “as [an] agent or actor-for-others”⁴² and is often referred to as “substantive representation.”

In the context of demographic diversity on the federal courts, it has been argued, “to the extent that minority and female judges have unique perspectives that influence their decisionmaking ... their presence on the bench is necessary to ensure that the views of more Americans are considered in the judicial decisionmaking process.”⁴³ If, however, “diversity appointees were to decide cases in the same manner as white males (assuming similar political ideologies), then diversity on the bench may not be necessary or sufficient to further the substantive representation of minorities and women.”⁴⁴ The theory of substantive representation, of course, assumes that certain groups, including demographic groups, have identifiable and distinct interests—a premise that might not be accepted, at least in the context of the judiciary, by some judges or other policy makers. Additionally, some female or minority judges might, themselves, reject the notion that their sex, race, or some other attribute influences their decisionmaking on the bench.⁴⁵

As with studies of descriptive representation, empirical studies of substantive representation have focused primarily on Congress.⁴⁶ One study, however, analyzing the potential effects of gender on

³⁹ See, for example, Jennifer L. Lawless, “Politics of Presence? Congresswomen and Symbolic Representation,” *Political Research Quarterly*, vol. 57 (2004), pp. 81, 93 (finding little evidence that the presence of women officeholders affects constituents’ evaluations of their members of Congress or levels of political efficacy and trust in government); see also Susan A. Banducci, Todd Donovan & Jeffrey A. Karp, “Minority Representation, Empowerment, and Participation,” *Journal of Politics*, vol. 66 (2004), pp. 534, 549 (finding that African Americans who are represented by African Americans in Congress are more likely to recall the name of their representative, more likely to contact the representative, and approve of his or her performance than African Americans who are not represented by African Americans).

⁴⁰ Scherer, “Diversifying the Federal Bench,” p. 601, emphasis in original (quoting Sherrilyn A. Ifill, “Racial Diversity on the Bench: Beyond Role Models and Public Confidence,” *Washington & Lee Law Review*, vol. 57 (2000), pp. 405, 407-08).

⁴¹ Pitkin, *Representation*, p. 113.

⁴² *Ibid.*, p. 115.

⁴³ Scherer, “Diversifying the Federal Bench,” p. 604.

⁴⁴ Note that “at least one political theorist has argued that, even short of distinctive decisionmaking, the mere presence of minority groups and women furthers important goals, including undermining the perception that the courts are run by white male judges.” *Ibid.* (citing Virginia Sapiro, *When Are Interests Interesting? The Problem of Political Representation of Women*, *American Political Science Review*, vol. 75 (1981), pp. 701, 712).

⁴⁵ For example, a female U.S. district court judge, when asked in an interview “whether specifically a judge’s race, ethnicity, or gender influences decisionmaking” replied, “‘What does gender have to do with judging?’” Scherer, “Diversifying the Federal Bench,” pp. 606-07.

⁴⁶ See, for example, Brinck Kerr & Will Miller, “Latino Representation, It’s Direct and Indirect,” *American Journal of Political Science*, vol. 41 (1997), pp. 1066, 1071 (finding that during the 100th Congress Hispanic members’ voting records were distinct from those of non-Hispanics on issues identified as important to Latinos by the Southwest Voter Research Institute); see also Kathleen A. Frankovic, “Sex and Voting in the U.S. House of Representatives: 1961-1975,” *American Politics Quarterly*, vol. 5 (1977), pp. 315, 329 (finding that the voting behavior of women in Congress “like that of male legislators is related to personal characteristics, the type of districts they represent, and (continued...)”).

judging did not find sex-based differences in judicial rulings in 12 of 13 areas of law (the study did, however, find sex-based effects in cases involving sex discrimination).⁴⁷ Additionally, another scholar, analyzing differences in voting patterns between black and white judges, suggests that there might be a difference in how the two groups of judges approach cases dealing with Fourth Amendment rights as well as race discrimination cases.⁴⁸

U.S. Circuit Court Judges

Sex

As shown by **Figure 5**, women comprise 32.1% of active U.S. circuit court judges and 10.5% of senior status circuit judges (while men comprise 67.9% and 89.5% of active and senior circuit court judges, respectively).

Of the 52 active circuit court judges currently serving who are women, the greatest percentage were appointed by Presidents G.W. Bush and Clinton (each with 30.8%), followed by President Obama (28.8%).⁴⁹ Of the 12 senior circuit court judges who are women, 8 (or two-thirds of them) were appointed by President Carter (followed by 2 judges each for Presidents Clinton and G.H.W. Bush). As mentioned above, given the age and service requirements for active judges to assume senior status, more recent Presidents will have fewer, if any, judges serving as senior judges.

(...continued)

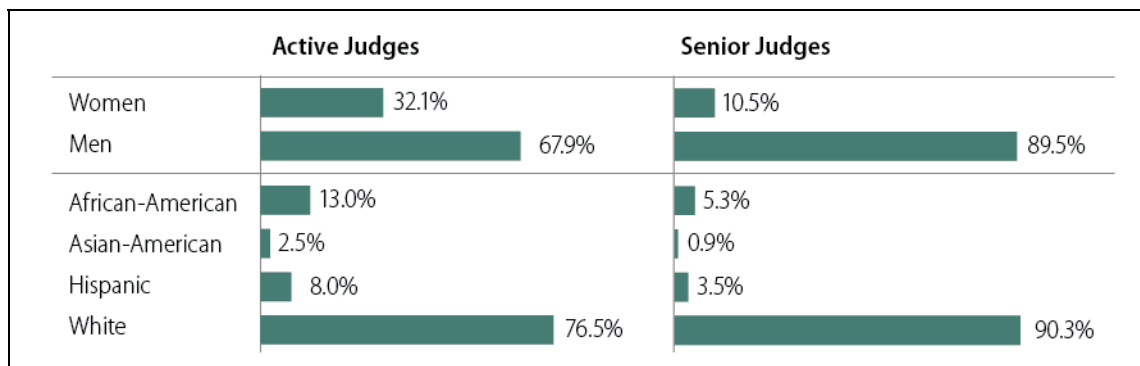
several institutional criteria” but noting that the data suggests “the emergence of a ‘liberal’ unity among Congresswomen” reflective of a “feminist coalition—if not truly ‘feminist in orientation, at least a coalition of feminine members of the House.”); Arturo Vega & Juanita M. Firestone, “The Effects of Gender on Congressional Behavior and the Substantive Representation of Women,” *Legislative Studies Quarterly*, vol. 20 (1995), pp. 213, 220 (finding that “party, constituency, and district characteristics remain better predictors of congressional voting behavior than does gender” but that the “introduction of women-related legislation and the voting cohesiveness of female legislators suggest two important manifestations of increased substantive representation of women by female members of Congress”).

⁴⁷ Christina L. Boyd, Lee Epstein & Andrew D. Martin, “Untangling the Causal Effects of Sex on Judging,” *American Journal of Political Science*, vol. 54 (2010), pp. 389, 401 (finding that “female and male judges differ significantly in their treatment of Title VII sex discrimination suits”). See also Jennifer L. Peresie, “Female Judges Matter: Gender and Collegial Decisionmaking in the Federal Appellate Courts,” *Yale Law Journal*, vol. 114 (2005), pp. 1759, 1779 (finding that of the Title VII sexual harassment and sex discrimination cases analyzed in the article, plaintiffs generally lost; also noting, however, that “plaintiffs were significantly more likely to win ... when a female judge was on the bench”).

⁴⁸ Scherer, “Diversifying the Federal Bench,” p. 606.

⁴⁹ The raw numbers, in descending order from greatest to fewest number of female active U.S. circuit court appointees, for the 5 Presidents listed in **Figure 3** are 16 (G.W. Bush), 16 (Clinton), 15 (Obama), 3 (G.H.W. Bush), and 2 (Reagan).

Figure 5. Percentage of Active and Senior U.S. Circuit Court Judges by Select Demographic Characteristics
(as of March 7, 2014)



Source: CRS analysis of data provided by the Administrative Office of U.S. Courts.

Notes: This figure shows, as of March 7, 2014, the percentage of active and senior U.S. circuit court judges by select demographic characteristics.

Altogether, Democratic Presidents have appointed 59.6% of all active U.S. circuit court judges who are women (and 83.3% of female senior status circuit judges). Republican Presidents appointed 40.4% of active U.S. circuit court judges who are women (and 16.7% of female senior status circuit judges).⁵⁰

Note, however, that the overall percentage breakdown by party of the appointing President does not mean that Democratic Presidents have appointed a greater percentage of active female circuit court judges in each of the individual judicial circuits. For example, Republican Presidents have appointed more active female judges to the Fifth, Sixth, and Federal Circuits, while Democratic and Republican Presidents have appointed the same number of active female judges to the Second and Seventh Circuits.⁵¹ Democratic Presidents appointed more active female judges for the remaining eight circuits.

Lastly, the percentage of active circuit court judges who are women varies across judicial circuits, from a high of 46.7% for the Sixth Circuit (followed by the D.C. Circuit at 45.5%) to a low of 10.0% for the Tenth Circuit (with the next lowest being 16.7% for the Third Circuit).⁵²

⁵⁰ Of the 52 active circuit court judges who are women, Democratic Presidents appointed 31 and Republican Presidents appointed 21. Of the 12 senior circuit court judges who are women, Democratic Presidents appointed 10, while Republican Presidents appointed 2.

⁵¹ In the Fifth Circuit (comprised of Louisiana, Mississippi, and Texas), there are five active female judges who were appointed by Republican Presidents and none appointed by Democratic Presidents, while in the Sixth Circuit (comprised of Kentucky, Michigan, Ohio, and Tennessee), there are four active female judges appointed by Republican Presidents and three appointed by Democratic Presidents. For the Federal Circuit, Republican Presidents appointed three of the four active female judges.

⁵² The percentage of *sitting* female judges (i.e., taking into account active judges as well as senior status judges) across judicial circuits has not, as of this writing, been calculated by CRS. Also, as mentioned above, because many circuit courts have a relatively small number of judgeships, small changes in the total number of women serving on a court can produce relatively large swings in the statistics reported above.

Race

Figure 5 also reports the percentage of active and senior U.S. circuit court judges who are identified by the *Biographical Directory of Federal Judges* as white, African American, Hispanic, and Asian American.⁵³ As of this writing, circuit court judges who are white account for 76.5% of all active judges and 90.3% of senior judges. African American judges comprise 13.0% of all active judges and 5.3% of senior circuit judges. For Hispanic judges, the corresponding percentages are 8.0% (active) and 3.5% (senior), while for Asian Americans the corresponding percentages are 2.5% (active) and 0.9% (senior).⁵⁴

Of the 21 active circuit court judges who are African American, Presidents Clinton, Obama, and G.W. Bush appointed 9, 8, and 4, respectively.⁵⁵ Of the six senior circuit court judges who are African American, President Carter appointed four and Presidents Obama and G.W. Bush each appointed one.

Of the 13 active circuit court judges who are Hispanic, President Clinton appointed the greatest number (5), followed by Presidents Obama (4), G.W. Bush (3), and Reagan (1). Of the four senior circuit court judges who are Hispanic, President G.H.W. Bush appointed two and Presidents Clinton and Carter each appointed one.

President Obama appointed each of the four active circuit court judges who are Asian American. The sole senior Asian American judge was appointed by President Clinton.

Combining the three groups of non-white active circuit court judges (for a total of 38 active non-white judges currently serving on the bench, or 23.5% of 162 total judges), President Obama appointed the greatest percentage (42.1%), followed by Presidents Clinton (36.8%), G.W. Bush (18.4%), and Reagan (2.6%).⁵⁶ As for the 11 non-white senior status judges currently serving, President Carter appointed 5, Presidents Clinton and G.H.W. Bush each appointed 2, and Presidents Obama and G.W. Bush each appointed 1.

Altogether, Democratic Presidents have appointed 78.9% of all non-white active circuit court judges as well as 72.7% of non-white senior judges. Of active non-white judges currently serving, Democratic Presidents appointed a majority (or all) on the Second, Third, Fourth, Fifth, Sixth, Seventh, Ninth, Eleventh, DC, and Federal Circuits. A Republican President appointed the sole active non-white circuit court judge serving on the Eighth Circuit. Democratic and Republican

⁵³ The racial categories used in this report “generally reflect a social definition of race recognized in this country and [are] not an attempt” by CRS “to define race biologically, anthropologically, or genetically.” See <http://www.census.gov/population/race>. For the purposes of this report, the Hispanic category is treated as a non-white category. But note that individuals who identify as Hispanic or Latino may be of any race. Ibid.

⁵⁴ Of the 162 active circuit court judges, 124 are white, 21 are African American, 13 are Hispanic, and 4 are Asian American. Of the 114 senior circuit court judges, 103 are white, 6 are African American, 4 are Hispanic, and 1 is Asian American.

⁵⁵ As noted above, Roger L. Gregory (an African American judge on the Fourth Circuit) is counted as an appointee of President Clinton. After receiving a recess appointment from President Clinton, Judge Gregory was nominated to the same position by President G.W. Bush and subsequently confirmed by the Senate.

⁵⁶ The raw numbers, in descending order from greatest to fewest number of non-white active U.S. circuit court appointees, for the 4 Presidents are 16 (Obama), 14 (Clinton), 7 (G.W. Bush), and 1 (Reagan).

Presidents appointed an equal number of non-white active judges currently serving on the First and Tenth Circuits.⁵⁷

Finally, there is variation across judicial circuits in the percentage of non-white active circuit court judges. The percentage of non-white circuit court judges ranges from a high of 40.0% for the First Circuit (followed by 36.4% for the D.C. Circuit) to a low of 9.1% for the Eighth Circuit (with the Seventh Circuit having the next lowest percentage at 10.0%).⁵⁸

Sex and Race

Figure 6 displays the percentage of active and senior U.S. circuit court judges broken down by sex and race. Three of the categories (white women, non-white women, and non-white men) represent nontraditional judges in terms of belonging to demographic groups from which, historically, individuals were not often, if at all, selected for federal judgeships.⁵⁹ So, for example, of all women who have ever served as a U.S. circuit court judge, 96.9% were appointed after 1977.⁶⁰ Of all African Americans who have ever served as a circuit court judge, 89.7% were appointed after 1977, while 100% of Hispanic circuit court judges and 85.7% of Asian American circuit court judges were appointed after 1977.⁶¹

The relatively recent increase in the percentage of nontraditional circuit and district court judges likely reflects a number of factors, including underlying changes in the demographic characteristics of law school enrollees, graduates, and those admitted to the bar.⁶² For example, during the 10 academic years preceding the Carter Presidency (i.e., from 1966-1967 through 1975-1976), the average percentage of total J.D. enrollees in American Bar Association-approved law schools that were women was 11.1%. During the 10 academic years from 2002-2003 through 2011-2012, the average was 47.4%.⁶³

⁵⁷ Such calculations have not been done for non-white senior U.S. circuit court judges.

⁵⁸ Variation in the percentage of *sitting* non-white judges (i.e., taking into account active judges as well as senior status judges) across judicial circuits has not, as of this writing, been calculated by CRS. As with variation in the percentage of non-white active judges across judicial circuits, variation in the percentage of non-white sitting judges will likely reflect, in part, variation in the underlying demographics of the states located within each particular circuit. But as noted above in the discussion of female circuit court judges, a relatively small change in the number of non-white judges serving in some circuits can produce relatively large changes in the percentage of sitting non-white judges in those circuits.

⁵⁹ As used in this report, the term nontraditional refers only to judges belonging to one of the three broad demographic groups identified in the text (white women, non-white women, and non-white men) and does not refer to judicial conduct or judicial philosophy.

⁶⁰ This marks the beginning of the Carter presidency and, as discussed in a footnote below, President Carter was the first President to emphasize diversity as a cornerstone of his judicial selection process.

⁶¹ Additionally, most of the nontraditional judges who have ever served on the bench were appointed after 1993 (i.e., after the start of the Clinton presidency). Of all women who have ever served as a U.S. circuit court judge, 61.5% were appointed after 1993. Of all African Americans who have ever served as a circuit court judge, 59.0% were appointed after 1993, while 73.7% of Hispanic circuit court judges and 62.5% of Asian American judges who ever served on the bench were appointed after 1993.

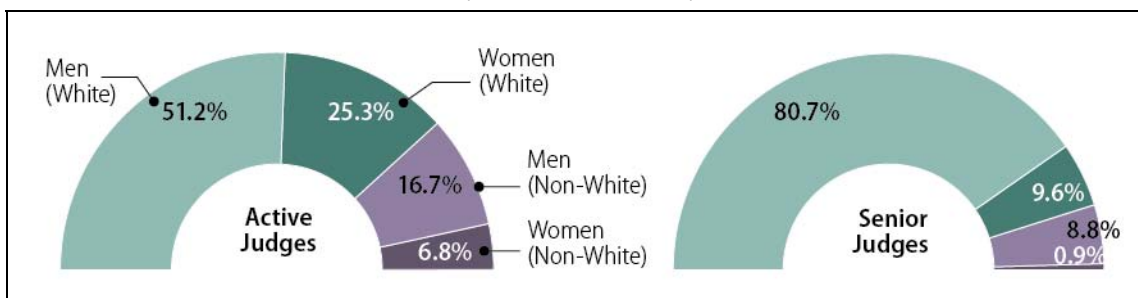
⁶² The statistics provided in this paragraph are provided by the American Bar Association, Section of Legal Education and Admissions to the Bar. See http://www.americanbar.org/groups/legal_education/resources/statistics.html.

⁶³ Similar statistics during the same time period for minority (non-white) enrollees are not available. However, during the five academic years preceding the Carter presidency (i.e., from 1971-72 to 1975-76), the average percentage of total J.D. enrollees in American Bar Association-approved law schools that were minorities was 7.2%. During the five academic years from 2007-08 through 2011-2012, the average was 22.8%. *Ibid.*

Of active circuit court judges, 51.2% are white men, 25.3% are white women, 16.7% are non-white men, and 6.8% are non-white women.⁶⁴ Altogether, 48.8% of active circuit court judges currently on the bench are nontraditional judges.

Of senior circuit court judges, 80.7% are white men, 9.6% are white women, 8.8% are non-white men, and less than 1.0% are non-white women.⁶⁵ Altogether (and in contrast to the 48.8% reported above), 19.3% of senior circuit court judges are nontraditional judges.

Figure 6. Percentage of Active and Senior U.S. Circuit Court Judges by Sex and Race
(As of March 7, 2014)



Source: CRS analysis of data provided by the Administrative Office of U.S. Courts.

Notes: This figure shows, as of March 7, 2014, the percentage of active and senior U.S. circuit court judges by sex and race.

As **Figure 6** shows, the percentage of non-white female active U.S. circuit court judges is approximately 7.5 times greater than the percentage of non-white female senior circuit court judges.⁶⁶ The percentage of white female active circuit court judges is 2.6 times greater than the percentage of white female senior circuit judges, while the percentage of non-white male active circuit court judges is nearly two times greater than the percentage of non-white male senior circuit judges.

Nontraditional U.S. Circuit Court Judges by Appointing President

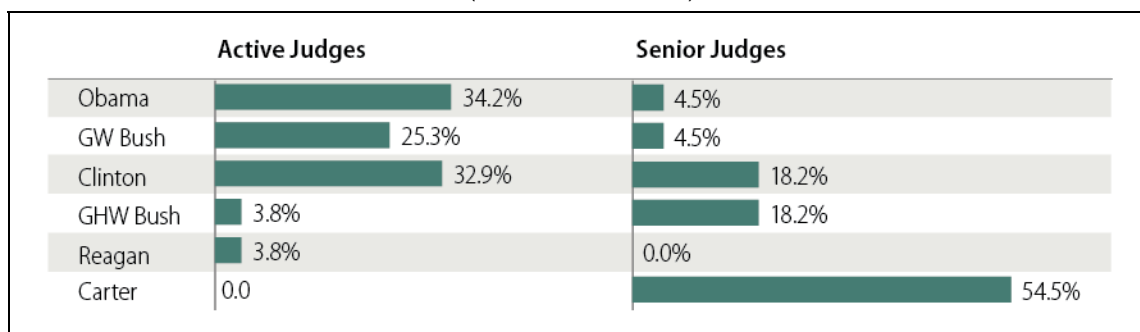
As defined above, nontraditional judges are those judges belonging to certain demographic groups from which individuals, historically, were not often selected for federal judgeships. For the purposes of this report, the specific demographic groups considered nontraditional include white women, non-white women, and non-white men. **Figure 7** shows, after combining the three groups, the overall percentage of nontraditional active and senior U.S. circuit court judges appointed by particular Presidents.

⁶⁴ Of the 162 active U.S. circuit court judges included in the analysis, there are 83 white men, 41 white women, 27 non-white men, and 11 non-white women.

⁶⁵ Of the 114 senior U.S. circuit court judges included in the analysis, there are 92 white men, 11 white women, 10 non-white men, and 1 non-white woman.

⁶⁶ Of the 11 non-white women serving as active U.S. circuit court judges, Presidents Clinton and Obama each appointed 4, while President G.W. Bush appointed 3.

Figure 7. Percentage of Active and Senior Nontraditional U.S. Circuit Court Judges by Appointing President
(as of March 7, 2014)



Source: CRS analysis of data provided by the Administrative Office of U.S. Courts.

Notes: This figure shows, as of March 7, 2014, the percentage of active and senior nontraditional U.S. circuit court judges by appointing President. For the purposes of this report, nontraditional judges are those judges belonging to demographic groups from which individuals, historically, were not often selected for federal judgeships. The specific demographic groups included as nontraditional for the percentages reported in this figure are white women, non-white women, and non-white men.

After five years in office, President Obama has appointed the greatest percentage of nontraditional active U.S. circuit court judges currently on the bench (34.2%). This percentage means that of all the white women, non-white women, and non-white men (combined) who are currently serving as active circuit court judges, President Obama has appointed 34.2%. President Clinton appointed 32.9% of all such nontraditional active judges, while President G.W. Bush appointed 25.3%. Other nontraditional active judges currently serving were appointed by Presidents G.H.W. Bush (3.8%) and Reagan (3.8%).⁶⁷

As for nontraditional senior circuit court judges, President Carter appointed 54.5% of those currently serving,⁶⁸ while Presidents Clinton and G.H.W. Bush each appointed 18.2% (with 4.5% appointed each by Presidents Obama and G.W. Bush).⁶⁹

Overall, Democratic Presidents appointed 67.1% of all nontraditional active circuit court judges and 77.3% of all nontraditional senior circuit court judges.

The overall percentage breakdown of nontraditional circuit court appointees by party of the appointing President does not mean, however, that Democratic Presidents have appointed a greater number of active nontraditional circuit court judges in each of the individual judicial

⁶⁷ The raw numbers, in descending order from greatest to fewest number of nontraditional active U.S. circuit court appointees for the 5 Presidents are 27 (Obama), 26 (Clinton), 20 (G.W. Bush), 3 (G.H.W. Bush), and 3 (Reagan). The 27 nominees represent, as of this writing, 64.3% if President Obama's circuit court appointees during his presidency.

⁶⁸ This percentage might reflect President Carter's emphasis on appointing minorities and women to the federal bench. As one scholar notes, "President Carter became the first President to implement a far-reaching appointment strategy with diversity as its cornerstone. By the end of his term, President Carter made significant progress towards achieving a diverse bench, appointing forty-one women (15.7% of total Carter appointees and 3.7% of all judges at the end of Carter's term), thirty-seven African-Americans (14.2% for Carter, 5.6% of all judges), and sixteen Hispanics (6.1% for Carter, 2.3% of all judges)." Scherer, "Diversifying the Federal Bench," p. 588.

⁶⁹ The raw numbers, in descending order from greatest to fewest number of nontraditional senior U.S. circuit court appointees for the 4 Presidents are 12 (Carter), 4 (Clinton), 4 (G.H.W. Bush), 1 (Obama), and 1 (G.W. Bush).

circuits.⁷⁰ For example, Republican Presidents have appointed more active nontraditional judges than Democratic Presidents to the Fifth Circuit and there are an equal number of nontraditional active circuit judges appointed by Democratic and Republican Presidents to the Seventh Circuit and Federal Circuit.⁷¹

Nontraditional U.S. Circuit Court Judges by Judicial Circuit

There is variation across judicial circuits in the percentage of active circuit court judges belonging to one of the three nontraditional groups of judges (i.e., white women, non-white women, and non-white men).⁷² **Figure 8** displays the overall percentage of active judges within each circuit belonging to one of the three groups of nontraditional judges. The percentage of nontraditional active circuit court judges ranges from a high of 63.6% for the D.C. Circuit to a low of 27.3% for the Eighth Circuit (comprised of Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota).

As noted above, nontraditional appointees account for 48.8% of all active U.S. circuit court judges. Eight circuits (the First, Second, Fourth, Fifth, Sixth, Eleventh, D.C., and Federal Circuits) exceed the national average in terms of the percentage of nontraditional active judges appointed to the circuit. Four circuits are below the national average; these are the Seventh, Eighth, Ninth, and Tenth Circuits.

Given the relatively small number of circuit court judgeships for many circuits, CRS has not calculated separate percentages for each of the three groups of nontraditional judges sitting on each circuit court (e.g., the percentage of active judges on each circuit court who are non-white women). For the same reason, CRS has not calculated the percentage of active judges on each circuit court who belong to a specific demographic group (e.g., the percentage of active judges on a particular court who are African American).

Consequently, the percentages reported in **Figure 8** do not indicate whether, among the nontraditional judges serving on a circuit court, there are judges belonging to each of the three nontraditional groups or to specific demographic groups. Such considerations might nonetheless be important to some Members who seek to increase the representation of a particular demographic group (e.g., African American women) among active U.S. circuit court judges in one or more judicial circuits.⁷³ For example, at present, there are no active African American female judges on the Fifth Circuit (comprised of Louisiana, Mississippi, and Texas) or the Eleventh Circuit (comprised of Alabama, Georgia, and Florida).⁷⁴

⁷⁰ Variation in the percentage of *sitting* nontraditional judges (i.e., taking into account active judges as well as senior status judges) across judicial circuits has not, as of this writing, been calculated by CRS.

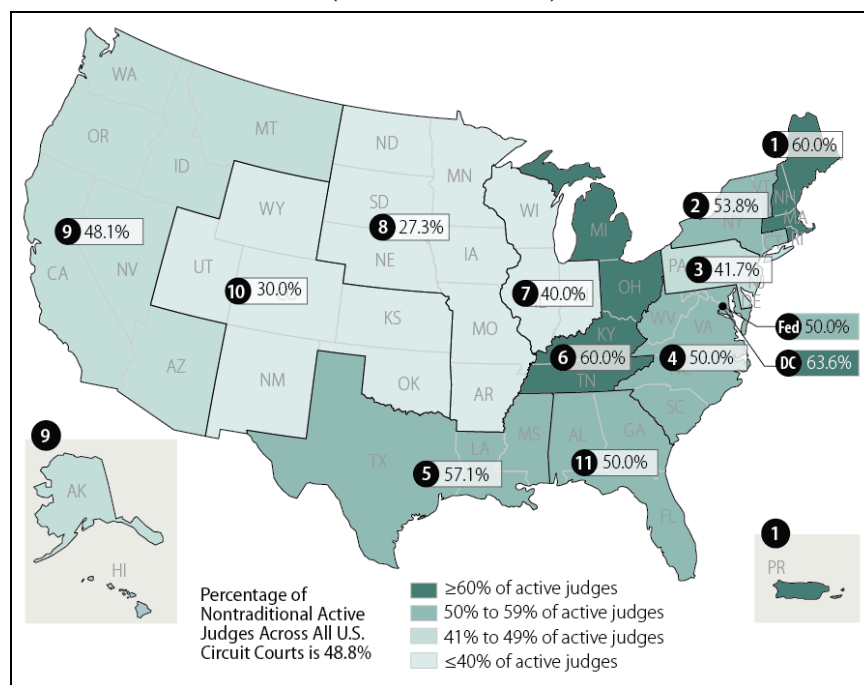
⁷¹ Of active circuit court judges currently serving on the bench, Democratic Presidents have appointed at least one nontraditional active judge to each circuit, while Republican Presidents have appointed no nontraditional active judges currently serving on the Third or Eleventh Circuits.

⁷² The percentage of *sitting* nontraditional U.S. circuit court judges (i.e., taking into account both active and senior status judges) by judicial circuit has not been compiled by CRS.

⁷³ Additionally, as discussed below, such a consideration might also be important for some Members who seek to enhance representation of specific demographic groups among district court judges.

⁷⁴ Additionally, according to the *Biographical Directory of Federal Judges*, there have never been any African American female judges appointed to either circuit court. In contrast, a total of seven white women and three African American men have been appointed at some point to the Fifth Circuit and a total of five white women and two African American men have served on the Eleventh Circuit.

Figure 8. Percentage of Nontraditional Active U.S. Circuit Court Judges by Judicial Circuit
(as of March 7, 2014)



Source: CRS analysis of data provided by the Administrative Office of U.S. Courts.

Notes: This figure shows, as of March 7, 2014, the percentage of nontraditional active U.S. circuit court judges by judicial circuit. For the purposes of this report, nontraditional judges are those judges belonging to demographic groups from which individuals, historically, were not often selected for federal judgeships. The specific demographic groups included as nontraditional for the percentages reported in this figure are white women, non-white women, and non-white men.

Age⁷⁵

The average (and median) age of active U.S. circuit court judges is 62.7 (63.0) and their average (median) number of years of service as a circuit judge is 12.3 (10.9) years.⁷⁶ For active circuit court judges currently serving, the average (median) age at the time of appointment was 50.7 (51.0). There is, however, some variation among Presidents in the age of their active circuit court appointees at the time of appointment. Of President Obama's active appointees, for example, the average (median) age at the time of appointment was 54.1 (54.0) while for President Clinton's and G.W. Bush's active appointees it was 50.8 (50.0) and 50.0 (51.0), respectively.

⁷⁵ Unlike other statistics provided in this report (which are current as of March 7, 2014), the statistics related to age and senior status eligibility are current as of December 31, 2013. This reflects greater ease in calculating such statistics at the end of a calendar year. Consequently, the statistics reported for age and senior status eligibility do not include judges who have, during 2014, been confirmed or become eligible for senior status.

⁷⁶ The "average" or "mean" is the arithmetic mean, while the "median" indicates the middle value for a particular set of numbers.

Active U.S. Circuit Court Judges Eligible For Senior Status

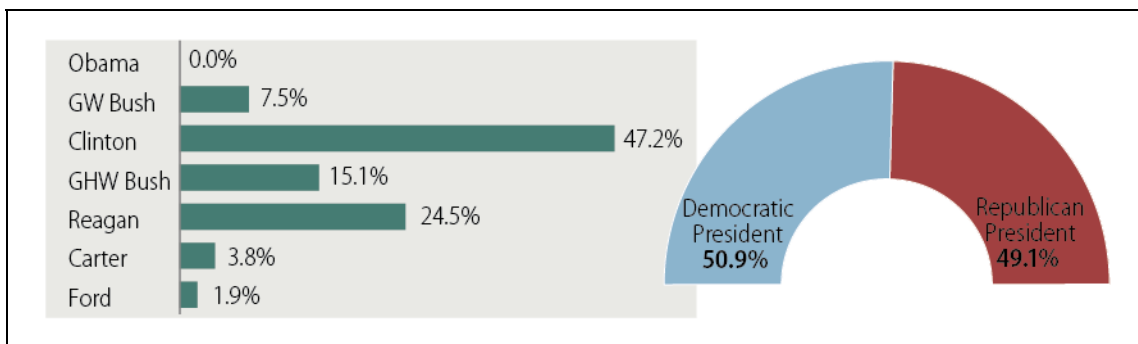
Figure 9 shows, by appointing President (and the party of the appointing President), the percentage of active U.S. circuit court judges who are eligible to take senior status. A judge who assumes senior status retires from active service while continuing to perform the judicial duties of his or her office, including hearing cases, if assigned to do so by the chief judge of the circuit or by the Chief Justice.⁷⁷ Senior status eligibility is based upon a judge's age as well as his or her length of service as an Article III judge.⁷⁸ Specifically, beginning at age 65, a judge may retire from office or take senior status after performing 15 years of active service as an Article III judge. A sliding scale of increasing age and decreasing service results in eligibility for retirement compensation at age 70 with a minimum 10 years of service.⁷⁹

Of active circuit court judges who are eligible for senior status, President Clinton appointed nearly half (47.2%) and President Reagan appointed approximately one quarter (24.5%). Active appointees who are eligible for senior status were also appointed by Presidents G.H.W. Bush (15.1%), G.W. Bush (7.5%), Carter (3.8%), and Ford (1.9%).⁸⁰

Of active circuit judges eligible for senior status, 50.9% were appointed by Democratic Presidents and 49.1% were appointed by Republican Presidents.

Figure 9. Percentage of Active U.S. Circuit Court Judges Eligible for Senior Status by Appointing President and Party of Appointing President

(as of December 31, 2013)



Source: CRS analysis of data provided by the Administrative Office of U.S. Courts.

Notes: This figure shows, as of December 31, 2013, the percentage of active U.S. circuit court judges eligible for senior status by appointing President and by the party of the appointing President.

The circuit, as of December 31, 2013, with the greatest percentage of active circuit court judges eligible for senior status was the Seventh Circuit (50.0% of its active judges), followed by the

⁷⁷ 28 U.S.C. § 294.

⁷⁸ A judge can also take senior status after providing certification to the President in writing of a permanent mental or physical disability. 28 U.S.C. § 372(a).

⁷⁹ *Senior Status and Retirement for Article III Judge, Judges Information Series No. 4* (Washington, DC: Administrative Office of the United States Courts, 1999), p. vii.

⁸⁰ Of the 53 active U.S. circuit court judges that CRS calculated were eligible, as of December 31, 2013, to assume senior status, 25 were appointed by President Clinton and 13 were appointed by President Reagan. The remaining 15 judges were appointed by President G.H.W. Bush (8), G.W. Bush (4), Carter (2), and Ford (1).

Fifth Circuit (42.9%) and the First Circuit (40.0%). The circuit with the lowest percentage of active circuit court judges eligible for senior status was the Second Circuit (23.1% of its active judges), followed by the Third and Federal Circuits (each with 25.0% of its active judges eligible to take senior status).

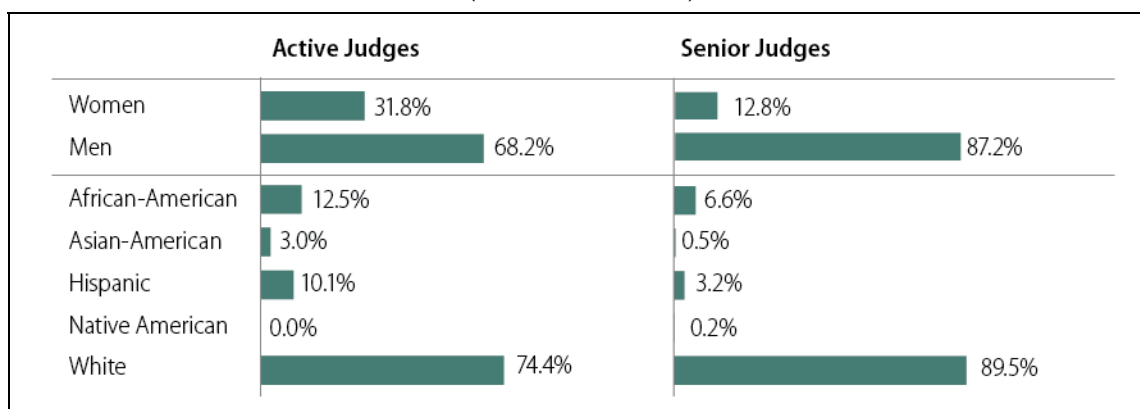
U.S. District Court Judges

Sex

As shown by **Figure 10**, 31.8% of active U.S. district court judges are women (and 68.2% are men). The greatest percentage of female active district court judges currently serving on the bench were appointed by President Obama (39.6%), followed by Presidents G.W. Bush (27.6%), and Clinton (21.9%). Other Presidents with female appointees currently active include Presidents G.H.W. Bush (8.3%), Carter (1.6%), and Reagan (1.0%).⁸¹

Additionally, 12.8% of senior district court judges currently serving are women. President Clinton appointed over half of that group (55.4%), followed by President Carter (19.6%). Current senior district court judges who are women were also appointed by Presidents G.H.W. Bush (12.5%), Reagan (10.7%), and G.W. Bush (1.8%).⁸²

Figure 10. Percentage of Active and Senior U.S. District Court Judges by Select Demographic Characteristics
(as of March 7, 2014)



Source: CRS analysis of data provided by the Administrative Office of U.S. Courts.

Notes: This figure shows, as of March 7, 2014, the percentage of active and senior U.S. district court judges by select demographic characteristics.

Altogether, Democratic Presidents appointed 63.0% of active female district court judges while Republican Presidents appointed 37.0%. For female senior status judges, Democratic Presidents appointed 75.0% and Republican Presidents appointed 25.0%.

⁸¹ The raw numbers, in descending order from greatest to fewest number of female active U.S. district court appointees, for the 6 Presidents are 76 (Obama), 53 (G.W. Bush), 42 (Clinton), 16 (G.H.W. Bush), 3 (Carter), and 2 (Reagan).

⁸² The raw numbers, in descending order from greatest to fewest number of female senior U.S. district court appointees, for the 5 Presidents are 31 (Clinton), 11 (Carter), 7 (G.H.W. Bush), 6 (Reagan), and 1 (G.W. Bush).

Note, however, that there is variation across individual judicial districts in the number (and percentage) of female active judges appointed by Democratic and Republican Presidents. Such statistics have not, as of this writing, been compiled by CRS for each of the 91 judicial districts. Examples, however, include the Western District of Texas (no Democratic female appointees and two Republican female appointees); the Northern District of Alabama (one Democratic female appointee and three Republican female appointees); the Middle District of Florida (two Democratic female appointees and five Republican female appointees); the Northern District of California (five Democratic female appointees and no Republican female appointees); and the Northern District of Illinois (four Democratic female appointees and two Republican female appointees).

Race

Figure 10 also shows that, as of March 7, 2014, 74.4% of active district court judges are white, while 12.5% are African American, 10.1% are Hispanic, and 3.0% are Asian American.⁸³ Of senior district court judges, 89.5% are white, 6.6% are African American, 3.2% are Hispanic, 0.5% are Asian American, and 0.2% are Native American.⁸⁴

The greatest percentage of the 76 African American active district court judges were appointed by President Obama (40.8%). The percentage of African American active district court judges appointed by other Presidents include Presidents Clinton (32.9%), G.W. Bush (22.4%), Reagan (2.6%), and G.H.W. Bush (1.3%).⁸⁵ Of the 29 senior African American district court judges, President Clinton appointed 12 (41.4%) and President Carter appointed 9 (31.0%). Other Presidents with African American appointees serving as senior judges include Presidents G.H.W. Bush (7) and Reagan (1).

President G.W. Bush appointed the greatest percentage of the 61 Hispanic active district court judges currently serving on the bench (42.6%), followed by Presidents Obama (37.7%), Clinton (9.8%), G.H.W. Bush (3.3%), Reagan (3.3%), Carter (1.6%), and Johnson (1.6%).⁸⁶ Of the 14 senior Hispanic district court judges, President Clinton appointed 6, while Presidents Reagan, Carter, and G.H.W. Bush appointed 4, 3, and 1, respectively.

⁸³ Of the 603 active U.S. district court judges included in the analysis, there are 451 white judges, 74 African American judges, 58 Hispanic judges, and 17 Asian American judges. There are 3 active judges, according to the *Biographical Directory of Federal Judges*, who are biracial. For the percentages reported in **Figure 10**, each of the 3 judges are included in the relevant percentages related to their racial background. For example, the *Directory* lists Judge Analisa N. Torres as both an African American and Hispanic judge. Consequently, she is included in the percentage of African American active judges as well as the percentage of Hispanic active judges. But note that each district court judge who is biracial is counted only once in calculating the overall percentage of non-white active district court judges (which is reported in the text below).

⁸⁴ Of the 438 senior U.S. district court judges included in the analysis, there are 392 white judges, 29 African American judges, 14 Hispanic judges, 2 Asian American judges, and 1 Native American judge.

⁸⁵ The raw numbers, in descending order from greatest to fewest number of African American active U.S. district court appointees, for the 5 Presidents are 31 (Obama), 25 (Clinton), 17 (G.W. Bush), 2 (Reagan), and 1 (G.H.W. Bush).

⁸⁶ The raw numbers, in descending order from greatest to fewest number of Hispanic active U.S. district court appointees, for the 7 Presidents are 26 (G.W. Bush), 23 (Obama), 6 (Clinton), 2 (G.H.W. Bush), 2 (Reagan), 1 (Carter), and 1 (Johnson).

As for the 18 Asian American active district court judges, President Obama has appointed 12 (64.7%), while Presidents G.W. Bush and Clinton appointed 4 and 2, respectively. Of the two Asian American senior district court judges, Presidents Clinton and Reagan each appointed one.

Combining the three groups of non-white active district court judges who are currently serving on the bench (for a total of 152 judges, or 25.2% of all 603 active district court judges), reveals that President Obama appointed the greatest percentage (41.4%), followed by Presidents G.W. Bush (30.9%) and Clinton (21.7%).⁸⁷ Of the 46 non-white senior district court judges currently serving (accounting for 10.5% of all 438 senior district court judges), President Clinton appointed 19 (41.3%), while Presidents Carter, G.H.W. Bush, and Reagan appointed 13 (28.3%), 8 (17.4%), and 6 (13.0%), respectively.

Altogether, Democratic Presidents have appointed 64.5% of all non-white active district court judges as well as 69.6% of non-white senior judges. Republican Presidents have appointed 35.5% and 30.4%, respectively.

Note, however, that CRS has not calculated the percentage of active non-white district court judges appointed by Democratic or Republican Presidents in each of the 91 judicial districts. There is variation, however, in such percentages across judicial districts. For example, of the 7 non-white (all Hispanic) active district court judges for the Western District of Texas, Democratic Presidents appointed 2 and Republican Presidents appointed 5. Another example is the Middle District of Florida, where Republican Presidents appointed 3 of the non-white active judges (1 African American and 2 Hispanic judges) and Democratic Presidents appointed 2 (both African American).⁸⁸

Sex and Race

Of active district court judges, 52.7% are white men, 22.1% are white women, 15.4% are non-white men, and 9.8% are non-white women.⁸⁹ Altogether, 47.3% of active district court judges are nontraditional judges. Of senior district court judges, 78.5% are white men, 11.0% are white women, 8.7% are non-white men, and 1.8% are non-white women.⁹⁰ Altogether, 21.5% of senior district court judges are nontraditional judges (compared to 47.3% of active district court judges).

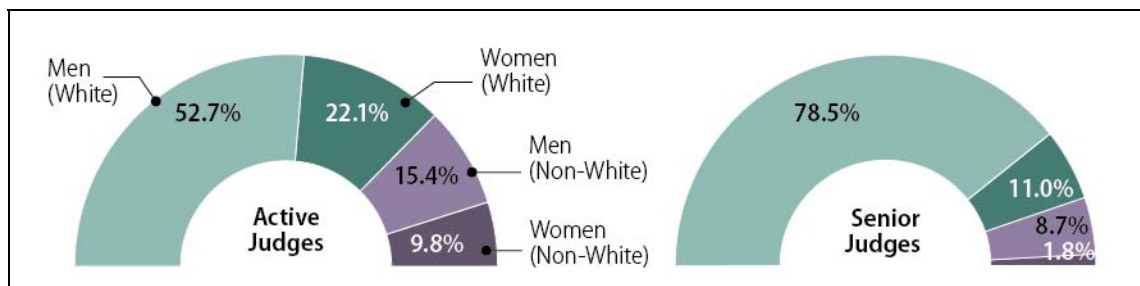
⁸⁷ The raw numbers, in descending order from greatest to fewest number of non-white active U.S. district court appointees for the 7 Presidents are 63 (Obama), 47 (G.W. Bush), 33 (Clinton), 4 (Reagan), 3 (G.H.W. Bush), 1 (Carter), and 1 (Johnson).

⁸⁸ Such calculations have not been done for non-white senior U.S. district court judges.

⁸⁹ Of the 603 active U.S. district court judges included in the analysis, there are 318 white men, 133 white women, 93 non-white men, and 59 non-white women.

⁹⁰ Of the 438 senior U.S. district court judges included in the analysis, there are 344 white men, 48 white women, 38 non-white men, and 8 non-white women.

Figure 11. Percentage of Active and Senior U.S. District Court Judges by Sex and Race
(as of March 7, 2014)



Source: CRS analysis of data provided by the Administrative Office of U.S. Courts.

Notes: This figure shows, as of March 7, 2014, the percentage of active and senior U.S. district court judges by sex and race.

As **Figure 11** shows, the percentage of non-white female active U.S. district court judges is approximately 5.4 times greater than the percentage of non-white female senior district court judges.⁹¹ The percentage of white female active district court judges is twice as great as the percentage of white female senior district judges, while the percentage of non-white male active district court judges is approximately 1.7 times greater than the percentage of non-white male senior district judges.

Nontraditional U.S. District Court Judges by Appointing President

As with nontraditional active circuit court judges, President Obama has also appointed the greatest percentage of nontraditional active district court judges currently serving on the bench (38.6%). The percentage of active nontraditional district court judges currently serving appointed by Presidents G.W. Bush and Clinton are 28.8% and 22.8%, respectively. Nontraditional judges currently serving were also appointed by Presidents G.H.W. Bush (6.3%), Reagan (2.1%), Carter (1.1%), and Johnson (0.4%).⁹²

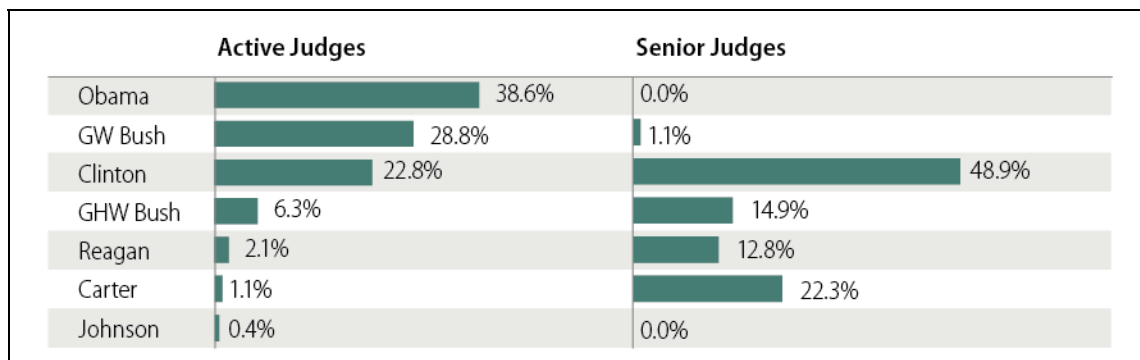
As for nontraditional senior district judges, President Clinton appointed the greatest percentage (48.9%) of the 94 currently sitting on the bench. Other Presidents and the corresponding percentage of nontraditional senior district court appointees currently serving include Presidents Carter (22.3%), G.H.W. Bush (14.9%), Reagan (12.8%), and G.W. Bush (1.1%).⁹³

⁹¹ The increase in the percentage of non-white female active district court judges is a relatively recent phenomenon. Of the non-white women currently serving on the bench as U.S. district court judges, President Obama has appointed nearly half (i.e., 49.2%).

⁹² The raw numbers, in descending order from greatest to fewest number of nontraditional active U.S. district court appointees for the 7 Presidents are 110 (Obama), 82 (G.W. Bush), 65 (Clinton), 18 (G.H.W. Bush), 6 (Reagan), 3 (Carter), and 1 (Johnson). The 110 appointees represent, as of this writing, 61.5% of President Obama's district court appointees during his presidency.

⁹³ The raw numbers, in descending order from greatest to fewest number of nontraditional senior U.S. district court appointees for the 5 Presidents are 46 (Clinton), 21 (Carter), 14 (G.H.W. Bush), 12 (Reagan), and 1 (G.W. Bush).

Figure 12. Percentage of Active and Senior Nontraditional U.S. District Court Judges by Appointing President
(as of March 7, 2014)



Source: CRS analysis of data provided by the Administrative Office of U.S. Courts.

Notes: This figure shows, as of March 7, 2014, the percentage of active and senior nontraditional U.S. district court judges by appointing President. For the purposes of this report, nontraditional judges are those judges belonging to demographic groups from which individuals, historically, were not often selected for federal judgeships. The specific demographic groups included as nontraditional for the percentages reported in this figure are white women, non-white men, and non-white women.

Altogether, Democratic Presidents appointed 62.8% of the nontraditional active district court judges (and 71.3% of senior district court judges). Republican Presidents appointed 37.2% of nontraditional active district judges (and 28.7% of senior district judges).

As with other statistics presented in this report, there is variation in these percentages across judicial districts. For example, Republican Presidents appointed a total of 5 nontraditional judges to the Western District of Texas (compared to 2 nontraditional judges appointed by Democratic Presidents). Another example is the District of New Mexico, where Republican and Democratic Presidents appointed an equal number of nontraditional judges (i.e., 2 apiece).

Nontraditional U.S. District Court Judges by Judicial District

CRS has not calculated the percentage of nontraditional district court judges serving on each of the 91 district courts. There is variation, however, in such percentages. For example, 53.3% of active judges serving the Eastern District of Pennsylvania are nontraditional judges, 50.0% of active judges serving the Northern District of Illinois are nontraditional, and 36.4% of active judges serving the Northern District of Ohio are nontraditional.⁹⁴

For states with multiple judicial districts (e.g., California), it might be more relevant to examine the percentage of nontraditional district court judges across all of a state's districts. So, for example, of the 60 active district court judges in California, 60.0% are nontraditional judges (compared, for example, to 51.1% of all active district court judges in Texas being nontraditional, 44.4% of active district court judges in Illinois, and 31.6% of active district court judges in Ohio).

⁹⁴ As discussed above, given the relatively smaller number of district court judgeships in many judicial districts, relatively small changes in the number of nontraditional judges serving in those districts can produce relatively large changes in the percentage of nontraditional judges within the same districts.

Additionally, some congressional commenters have noted that there are particular district courts which have a relatively low number and percentage of nontraditional judges (or judges belonging to specific demographic groups) as compared to what might be expected given the demographics of the population in the states where the district courts are located.

More specifically, for example, there are a total of 13 permanent and 1 temporary district court judgeships authorized for the three judicial districts within Alabama (i.e., the Northern, Middle, and Southern Districts). Of these 14 judgeships, 12 currently have active judges appointed to them while 2 of the judgeships are vacant. Of the 12 active judges, 7 (or 58.3%) are nontraditional; but of the 7 nontraditional judges, 6 are white female judges, while 1 is an African American male judge and none are African American female judges.⁹⁵ In a recent letter to President Obama, the Congressional Black Caucus cited the relatively low number of African American district court judges in Alabama as an example of “the dire need to address the lack of attention to the nomination and confirmation of African Americans to the bench in a manner that reflects the racial diversity of our jurisdictions and the nation as a whole.”⁹⁶

Conclusion

This report addresses the ongoing congressional interest in the demographic characteristics of U.S. circuit and district court judges. Congressional interest reflects, in part, questions related to the extent demographic characteristics of federal judges reflect either the nation at large or the specific states and communities which they serve.

For the purposes of this report, “nontraditional” judges are those judges who belong to demographic groups from which, historically, individuals were often not selected, if at all, for federal judgeships. Diversity among active circuit and district court judges has increased during each of the last three presidencies, with President Obama appointing the greatest percentage of “nontraditional” judges currently serving on the bench. As of this writing, the percentage of nontraditional active lower federal court judges is at a historic high and, given that nontraditional judges now comprise 48.8% and 47.3% of all circuit and district court judges currently serving, such judges may soon account for a majority of the nation’s active circuit and district court judges.

While there has been an increase in the number of nontraditional judges appointed to the bench, there remain issues of concern to some Members of Congress and others concerning the diversity of the lower federal courts. The Congressional Black Caucus, for example, recently raised the issue of the relatively low number and percentage of African American district court judges in particular judicial districts. Such issues will likely continue to be of interest to Congress as judicial vacancies occur and opportunities arise for Presidents to nominate new judges to the federal courts.

⁹⁵ According to 2012 statistics reported by the United States Census Bureau, 66.6% of Alabama’s population is white (not including those who also identify as Hispanic or Latino); 26.5% is black or African American; 4.1% is Hispanic; and 1.2% is Asian American (not including Native Hawaiian or other Pacific Islander). See <http://quickfacts.census.gov/qfd/states/01000.html>.

⁹⁶ The full text of the letter is available at <https://www.documentcloud.org/documents/1009668-cbc-judges-letter-to-the-president.html>.

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