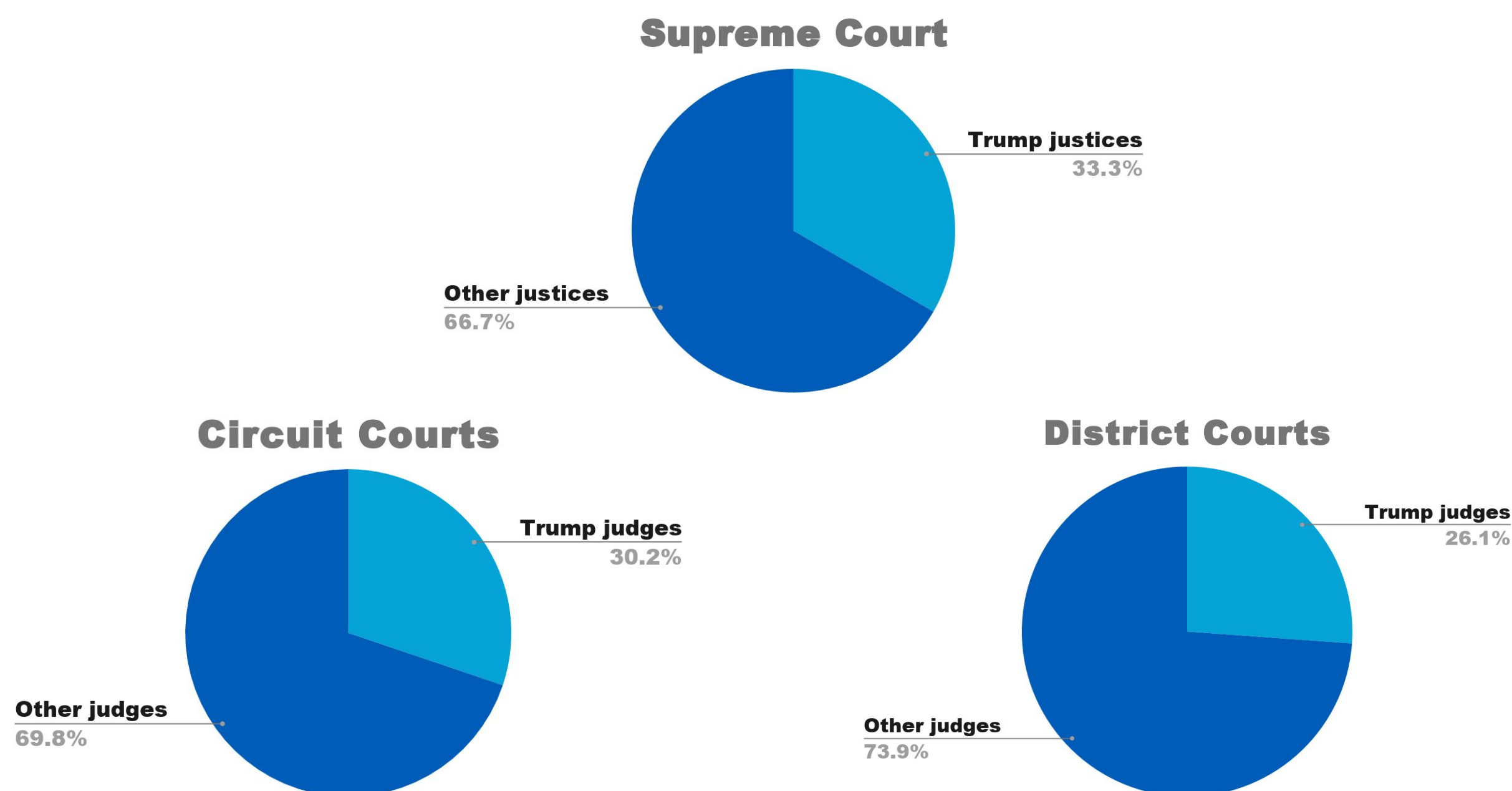


# Damage to the Federal Judiciary During the Trump Administration

**Over the last four years, Donald Trump and Senate Republicans, led by Mitch McConnell, have rigged the federal judiciary to work against everyday people.** They tipped the scales of justice in favor of the wealthy and powerful, handing lifetime federal judgeships to individuals who are openly hostile to our hard-won civil and human rights.<sup>1</sup> Through the outsourcing of the selection of judges to far-right groups like Federalist Society and Heritage Foundation, Trump and Senate Republicans deliberately chose judges whose backgrounds and records show that they are hostile to voting rights, access to health care including abortion, workers' rights, immigrant rights, disability rights, LGBTQ+ rights, separation of church and state, freedom from discrimination based on religion, environmental protections, gun safety, and more. The impact of this will be felt for generations. As we move forward, it is important to understand the damage that was done.

## Trump and McConnell Transformed Over 25 Percent of the Federal Judiciary in Just Four Years.

The Trump administration — aided by McConnell, who has prioritized transforming the federal judiciary — pushed through the selection and confirmation of extreme judges. In total, 234 lifetime, or Article III, judges were confirmed during Trump's presidency: three to the U.S. Supreme Court, 54 to the U.S. circuit courts, 177 to the U.S. district courts, and seven to the U.S. Court of International Trade.



<sup>1</sup> ["The Truth about Trump's Judges."](#) *The Leadership Conference on Civil and Human Rights*. August 25, 2020. See also Zwarenstejn, Lena. ["Trump's Takeover of the Courts."](#) 16 U. ST. THOMAS L.J. 146. April 2020.

Trump and McConnell were able to move quickly because McConnell intentionally refused to advance President Obama’s highly qualified nominees at the end of his second term. In addition to his unprecedented decision to hold open a Supreme Court seat for the entire last year of Obama’s presidency, McConnell held open a staggering 106 Article III seats — including 17 circuit court vacancies.<sup>2</sup>

Once Trump was sworn in, Republicans shattered Senate norms, rules, and procedures in order to stack the courts with a startling number of anti-civil rights judges during Trump’s single term. They disregarded home-state senators’ objections to extreme nominees, stacked hearings with multiple controversial nominees to limit the time spent considering each one, held recess hearings, and pushed through nominees who were rated Not Qualified by the American Bar Association.<sup>3</sup> They hid records of numerous nominees, including Brett Kavanaugh during his nomination to the Supreme Court.<sup>4</sup> In the midst of a pandemic and during an election, Republicans in the Senate rushed a third Trump justice onto the Supreme Court. After the unfortunate passing of Justice Ginsburg, they not only denied her dying wish to not fill the vacancy until the next president is inaugurated, but Senate Republicans hypocritically changed their position that they cannot move Supreme Court nominees during an election year.<sup>5</sup> The Senate ignored the urgent needs of people in America — including denying COVID-19 relief — in order to continue the endless conveyor belt of anti-civil-rights judges. This included confirming 14 lifetime judges even after the 2020 election.<sup>6</sup>

## Trump and McConnell Reversed Decades of Efforts to Diversify Our Courts.

Trump has ensured that our judges will be disproportionately more white and male than our communities.

White men comprise only 30 percent of the U.S. population — but nearly 65 percent of Trump’s judges are white men.

- ➔ Less than 16 percent of Trump’s judges are people of color, making Trump’s appointees the least diverse group of judges in nearly 30 years.
- ➔ Only 20.4 percent of Trump’s circuit court judges are women, and a mere 3.8 percent are women of color.
- ➔ Of Trump’s 54 circuit court judges, zero are Black and only one is Latino.
- ➔ Trump did not appoint a single Native American to any federal court.
- ➔ Out of 234 Article III judges appointed by Trump, only two are Black women.

This is perhaps unsurprising, because Trump selected individuals who are disproportionately hostile to our rights, including reproductive freedom, LGBTQ equality, the rights of immigrants, and voting rights. Indeed, many of Trump’s judges refused to even state that *Brown v. Board of Education*, the landmark and unanimous decision that ended legalized apartheid in America’s schools, was correctly decided.<sup>7</sup>

Exacerbating the lack of diversity on our courts, Trump replaced at least 10 of Obama’s nominees of color with white nominees, reflecting a concerted effort to roll back the diversity of the federal bench.<sup>8</sup> In addition, Trump and McConnell created an all-white circuit court. After McConnell blocked Obama’s nomination of Myra Selby to the Seventh Circuit,<sup>9</sup> who would have been the first African American and the first woman from Indiana to serve on that court, Trump had the opportunity to nominate five different judges to this court — and all of them were white.

2. [“Vacancy Summary for January 2017.”](#) *United States Courts*. January 6, 2017.

3. [“Top Ten Ways Grassley is Choosing Politics over Principle in Judicial Confirmations.”](#) *The Leadership Conference on Civil and Human Rights*. January 3, 2018.

4. Raju, Manu and Fox, Lauren. [“Republicans won’t budge on Kavanaugh documents amid Dem accusations of hiding records.”](#) *CNN*. August 2, 2018.

5. Hulse, Carl. [“How Mitch McConnell Delivered Justice Amy Coney Barrett’s Rapid Confirmation.”](#) *The New York Times*. October 27, 2020.

6. [“Senate Must Focus on COVID-19 Relief, Not Another Trump Appellate Court Nominee.”](#) *The Leadership Conference on Civil and Human Rights*. November 16, 2020.

7. [“Oppose the Confirmation of Judicial Nominees Who Decline to State Brown v. Board of Education Decision Was Correctly Decided.”](#) *The Leadership Conference on Civil and Human Rights*. May 13, 2019.

## OVERALL DEMOGRAPHICS OF JUDICIAL CONFIRMATIONS BY PRESIDENT<sup>10</sup>

	CARTER	REAGAN	GEORGE H. W. BUSH	CLINTON	GEORGE W. BUSH	OBAMA	TRUMP
<b>Overall People of Color Confirmed</b>	<b>57</b> <b>21.8%</b>	<b>23</b> <b>6.0%</b>	<b>21</b> <b>10.9%</b>	<b>93</b> <b>24.6%</b>	<b>55</b> <b>16.9%</b>	<b>118</b> <b>35.8%</b>	<b>37</b> <b>15.8%</b>
<b>Overall Women of Color Confirmed</b>	<b>8</b> <b>3.1%</b>	<b>2</b> <b>0.5%</b>	<b>5</b> <b>2.6%</b>	<b>23</b> <b>6.1%</b>	<b>20</b> <b>6.1%</b>	<b>48</b> <b>14.5%</b>	<b>9</b> <b>3.8%</b>
<b>Women Confirmed</b>	<b>41</b> <b>15.6%</b>	<b>32</b> <b>8.4%</b>	<b>36</b> <b>18.7%</b>	<b>110</b> <b>29.1%</b>	<b>70</b> <b>21.5%</b>	<b>134</b> <b>40.7%</b>	<b>56</b> <b>23.9%</b>
<b>Black/African Americans Confirmed</b>	<b>37</b> <b>14.1%</b>	<b>7</b> <b>1.8%</b>	<b>13</b> <b>6.7%</b>	<b>62</b> <b>16.4%</b>	<b>22</b> <b>6.7%</b>	<b>61</b> <b>18.5%</b>	<b>12</b> <b>5.1%</b>
<b>Black/African American Women Confirmed</b>	<b>7</b> <b>2.7%</b>	<b>1</b> <b>0.3%</b>	<b>2</b> <b>1.0%</b>	<b>16</b> <b>4.2%</b>	<b>8</b> <b>2.5%</b>	<b>24</b> <b>7.3%</b>	<b>2</b> <b>0.8%</b>
<b>Latinos/Hispanics Confirmed</b>	<b>16</b> <b>6.1%</b>	<b>14</b> <b>3.7%</b>	<b>8</b> <b>4.1%</b>	<b>25</b> <b>6.6%</b>	<b>29</b> <b>8.9%</b>	<b>37</b> <b>11.2%</b>	<b>12</b> <b>5.1%</b>
<b>Latinas/Hispanic Women Confirmed</b>	<b>1</b> <b>0.4%</b>	<b>1</b> <b>0.3%</b>	<b>3</b> <b>1.6%</b>	<b>6</b> <b>1.6%</b>	<b>11</b> <b>3.4%</b>	<b>11</b> <b>3.3%</b>	<b>3</b> <b>1.3%</b>
<b>Asian Americans Confirmed</b>	<b>2</b> <b>0.8%</b>	<b>2</b> <b>0.5%</b>	<b>0</b> <b>0%</b>	<b>5</b> <b>1.3%</b>	<b>4</b> <b>1.2%</b>	<b>22</b> <b>6.7%</b>	<b>13</b> <b>5.6%</b>
<b>Asian American Women Confirmed</b>	<b>0</b> <b>0%</b>	<b>0</b> <b>0%</b>	<b>0</b> <b>0%</b>	<b>1</b> <b>0.3%</b>	<b>1</b> <b>0.3%</b>	<b>11</b> <b>3.3%</b>	<b>4</b> <b>1.7%</b>

## More U.S. Circuit Courts are Composed of a Majority of Judges Selected by a Republican President.

Our 13 circuit courts of appeals wield incredible power to determine our civil and human rights. The Supreme Court hears less than 0.1 percent of all federal cases, while circuit courts hear 12 percent. This caseload means that circuit courts often have the final word on how our laws and rights are interpreted, because the overwhelming majority of cases never reach the Supreme Court.

<sup>8</sup> [“Senate Must Focus on COVID-19 Relief, Not Another Trump Appellate Court Nominee.”](#) *The Leadership Conference on Civil and Human Rights*. November 16, 2020.  
<sup>9</sup> Gropp, Maureen. [“Obama nominates Indiana lawyers to federal bench.”](#) *Indy Star*. January 12, 2016.  
<sup>10</sup> [“History of the Federal Judiciary.”](#) *Federal Judicial Center*. Accessed December 2020.

Trump’s takeover of the judiciary at the circuit court level is evident not only by the fact that 30 percent of circuit court judges were selected by Trump, but also by how many circuits have “flipped” control. At the end of the Obama administration, the U.S. Courts of Appeals for the Second Circuit, Third Circuit, and Eleventh Circuit had a majority of their judges appointed by Democratic presidents. Today, each of those crucial appellate courts have a majority of their judges appointed by Republican presidents. In addition, the margin in many circuits has significantly narrowed.

### CIRCUIT COURT MAKEUP BY PARTY OF NOMINATING PRESIDENT<sup>11</sup>

CIRCUIT	END OF OBAMA’S SECOND TERM		END OF TRUMP’S TERM	
<b>1</b> MA, ME, NH, PR, RI	<b>4 Democratic-appointed - 2 Republican-appointed</b>		<b>4 Democratic-appointed - 1 Republican-appointed</b>	<i>Note: 1 vacancy</i>
<b>2</b> CT, NY, VT	<b>6 Democratic-appointed - 5 Republican-appointed</b>	<i>Note: 2 vacancies</i>	<b>6 Democratic-appointed - 7 Republican-appointed</b>	<i>flipped</i>
<b>3</b> DE, NJ, PA, VI	<b>7 Democratic-appointed - 5 Republican-appointed</b>	<i>Note: 2 vacancies</i>	<b>6 Democratic-appointed - 8 Republican-appointed</b>	<i>flipped</i>
<b>4</b> MD, NC, SC, VA, WV	<b>10 Democratic-appointed - 4 Republican-appointed</b>		<b>9 Democratic-appointed - 5 Republican-appointed</b>	<i>narrowed</i>
<b>5</b> LA, MS, TX	<b>3 Democratic-appointed - 11 Republican-appointed</b>	<i>Note: 3 vacancies</i>	<b>5 Democratic-appointed - 12 Republican-appointed</b>	<i>narrowed</i>
<b>6</b> KY, MI, OH, TN	<b>5 Democratic-appointed - 10 Republican-appointed</b>		<b>5 Democratic-appointed - 11 Republican-appointed</b>	<i>narrowed</i>
<b>7</b> IL, IN, WI	<b>2 Democratic-appointed - 7 Republican-appointed</b>	<i>Note: 2 vacancies</i>	<b>2 Democratic-appointed - 8 Republican-appointed</b>	<i>Note: 1 vacancy</i>
<b>8</b> AR, IA, MN, MO, ND, NE, SD	<b>1 Democratic-appointed - 8 Republican-appointed</b>	<i>Note: 2 vacancies</i>	<b>1 Democratic-appointed - 10 Republican-appointed</b>	<i>narrowed</i>
<b>9</b> AK, AZ, CA, GU, HI, ID, MT, NV, NMI, OR, WA	<b>16 Democratic-appointed - 9 Republican-appointed</b>	<i>Note: 4 vacancies</i>	<b>16 Democratic-appointed - 13 Republican-appointed</b>	<i>significantly narrowed</i>
<b>10</b> CO, KS, NM, OK, UT, WY	<b>7 Democratic-appointed - 5 Republican-appointed</b>		<b>7 Democratic-appointed - 5 Republican-appointed</b>	
<b>11</b> AL, FL, GA	<b>7 Democratic-appointed - 4 Republican-appointed</b>	<i>Note: 1 vacancy</i>	<b>5 Democratic-appointed - 7 Republican-appointed</b>	<i>flipped</i>
<b>D.C.</b>	<b>7 Democratic-appointed - 5 Republican-appointed</b>		<b>7 Democratic-appointed - 5 Republican-appointed</b>	
<b>Federal</b>	<b>8 Democratic-appointed - 4 Republican-appointed</b>		<b>8 Democratic-appointed - 4 Republican-appointed</b>	

<sup>11</sup> [“Changing Circuit Court Composition.”](#) American Constitution Society. Updated December 16, 2020.

The effects of Trump's judicial takeover and his destruction of progress on diversity on the federal bench will be felt for decades to come. For our justice system to be fair and just, it is urgent that we build a judiciary that defends all of our rights, with judges who have a demonstrated commitment to civil and human rights, are fair-minded, have a progressive vision of the law, and are reflective and representative of the communities they serve.

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