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March 24, 2021

The Honorable Jerrold Nadler, Chair  
The Honorable Jim Jordan, Ranking Member  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Hank Johnson, Chair  
The Honorable Darrell Issa, Ranking Member  
Subcommittee on Courts, Intellectual Property, and the Internet  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, DC 20515

Dear Chair Nadler, Ranking Member Jordan, Chair Johnson, and Ranking Member Issa:

On behalf of The Leadership Conference on Civil and Human Rights (The Leadership Conference), a coalition of more than 220 national advocacy organizations, we thank you for holding this hearing on “The Importance of a Diverse Federal Judiciary,” and for the opportunity to submit this letter for the record. We are at a powerful moment in our nation’s history when there is real possibility for our judiciary to become more reflective and representative of the incredible diversity in our country and communities and to better serve the interests of all people in America.

The civil rights community is focused on building a fair and just federal judiciary that gives real meaning to the phrase “equal justice under law.” Our system of justice has failed far too many people. This system, founded predominantly by white men who enslaved Black people, was constructed to protect white supremacy and the wealthy and powerful. And our federal judiciary, which interprets the laws and the Constitution, was founded on — and far too often perpetuates — these same interests at the expense of everyone else.

For there to be equal justice, our courts must have judges who truly understand the ways in which laws impact people’s lives. People have fought and organized for decades to push our laws and institutions to reflect, represent, include, and serve everyone in this country, including Black, Brown, and Asian American and Pacific Islander communities, women, people with disabilities, LGBTQ people, people of faith and no faith, immigrants, and other people our systems have marginalized. These tireless efforts helped protect and promote some of our most important civil and human rights. We need judges and justices who not only understand these rights, but also how they have been historically and systemically denied to different communities. For a court to have legitimacy in the eyes of the people it is meant to serve, it must be both reflective of and responsive to all people.

Some of our landmark civil rights achievements include *Brown v. Board of Education*,<sup>1</sup> which ended legal apartheid in public education thanks to the efforts of civil rights advocates like Thurgood Marshall and Constance Baker Motley at the NAACP Legal Defense and Educational Fund, Inc.; the passage of the Voting Rights Act of 1965,<sup>2</sup> which expanded the right to vote and access to voting for Black citizens, due to the tireless work of civil rights leaders who suffered constant private and state-sanctioned violence because of their advocacy; and the recognition of marriage equality in *Obergefell v. Hodges*,<sup>3</sup> thanks to the LGBTQ advocates and organizations who challenged discriminatory laws in courtrooms across the country. None of these victories were easily won. They are the result of people working to make America a more perfect union.

Thurgood Marshall and Constance Baker Motley, both civil rights advocates, became our country's first Black Supreme Court justice and first Black woman federal judge, respectively. Ruth Bader Ginsburg was the first Jewish woman to serve on the U.S. Supreme Court and only the second woman to serve on the Court, and Sonia Sotomayor was the Court's first Latina justice. Their intellectual achievements and noteworthy jurisprudence demonstrate the incredible impact of intentional selection of judges who are representative of various communities, and reflect a need for even more work to ensure that our judiciary reflects our population.

President Jimmy Carter recognized the devastating lack of representation in our federal courts and made judicial diversity a priority. In fact, President Carter still holds the record, 40 years later, for the most Black circuit court judges confirmed in one term — nine. He encouraged the creation of judicial selection commissions, which would move away from a system where senators themselves picked nominees. President Carter noted that senators selected nominees who looked like them — overwhelmingly white and male — and he advocated for commissions that reflected the community more. Many of his successors made some progress, including President Barack Obama, who made great strides to diversify the bench both demographically and professionally.

By 2016, our judiciary was more diverse, but there was still much more work needed to ensure that our courts reflect our communities. But instead of prioritizing that work to ensure a fair judiciary, President Donald Trump's astonishing lack of diversity in judicial nominations set us back even further. President Trump selected and the Senate confirmed 25 percent of all active federal judges and 30 percent of our circuit court judges.

Of those selected by President Trump and confirmed by the Senate:

- Nearly 65 percent of judges are white men, despite white men comprising only 30 percent of the U.S. population;
- Less than 16 percent of judges are people of color, making Trump's appointees the least diverse group of judges in nearly 30 years;
- Only 20.4 percent of 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;

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<sup>1</sup> "[Landmark: Brown V. Board Of Education](#)." NAACP Legal Defense and Educational Fund, Inc. Accessed March 2021.

<sup>2</sup> "[Voting Rights Act](#)." Brennan Center for Justice. Accessed March 2021.

<sup>3</sup> "[The Journey to Marriage Equality in the United States](#)." Human Rights Campaign. Accessed February 2021.

- No Native Americans were selected for any federal court; and
- Out of 234 Article III judges appointed by Trump, only two are Black women.

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>4</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>5</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. Today, the Senate has still never confirmed a Muslim judge. There has only ever been one Senate-confirmed Native American federal judge. The Senate has confirmed only 13 openly LGBTQ federal judges.<sup>6</sup>

For there to be a better system of justice that serves all people, the justice system must reflect our communities. As Justice Thurgood Marshall said, we condemn the courts to “one-sided justice” when we deprive the legal process of “differing viewpoints and perspectives on a given problem.”<sup>7</sup> And this whitewashing of the courts is indefensible at a time when the legal profession has more female attorneys, attorneys of color, and LGBTQ attorneys than ever before. Representation matters so that future lawyers can see themselves on the bench one day, but most importantly it matters to the communities who depend on our judicial system to affirm their lived experiences and recognize injustice from the perspective of many — not the isolated perspective of one.

Extensive research has also shown that including a broad range of viewpoints in the judiciary enriches deliberations, fosters better-informed decisions, and enhances public confidence in our system of justice.<sup>8</sup> Diversity on the bench is not a panacea. Differing perspectives do not themselves ensure that courts will recognize and protect our civil and human rights. But promoting decision-making that includes voices from our nation’s diverse communities will help foster an equitable system of justice.

Our courts rely on the public’s trust, and representation greatly impacts the public perception of courts. Whether someone enters a courthouse or is impacted by a court’s decision, they must trust that the judges making these crucial decisions understand how laws function in people’s lives — especially in the lives of the communities that have been most marginalized by our courts and laws. Judges rule on nearly every aspect of our lives, from if and when we can vote to whether we have access to health care. Judges’ decisions impact the rights of working people, immigrant rights, voting rights, disability rights, health care access, educational equity, reproductive freedom, LGBTQ rights, environmental protections, and more.

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<sup>4</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>5</sup> Groppe, Maureen. [“Obama nominates Indiana lawyers to federal bench.”](#) *Indy Star*. January 12, 2016.

<sup>6</sup> [“LGBTQ+ Article III Judges.”](#) *Minority Corporate Counsel Association*. Accessed March 2021.

<sup>7</sup> Tushnet, Mark V. *Thurgood Marshall: His Speeches, Writings, Arguments, Opinions, and Reminiscences*. 2001. Pg. 243.

<sup>8</sup> Joshi, Yuvraj. [“Diversity Counts: Why States Should Measure the Diversity of Their Judges and How They Can Do It.”](#) *Lambda Legal and American Constitution Society*. 2017. See also Berry, Kate. [“Diverse Bench: A Guide for Judicial Nominating Commissioners.”](#) *Brennan Center for Justice*. 2019.

According to the Brookings Institute, our country is becoming more diverse at a faster rate. Indeed, nearly four in 10 people in America identify with a race or ethnic group other than white. The last decade will be the first in U.S. history in which the white population declined.<sup>9</sup> Yet, during the last four years, diversity on the courts decreased precipitously. As part of a holistic approach to fixing our justice system, it is vital that the president and the Senate prioritize the selection and confirmation of judges who are fully committed to upholding civil and human rights and who are reflective of the vast diversity that exists in the communities they serve. This diversity includes race, sex, gender identity, sexual orientation, disability status, ethnicity, national origin, socio-economic status, and experiential and professional background. A more diverse bench improves our justice system. That is why The Leadership Conference on Civil and Human Rights coalition and our Fair Courts Task Force are calling on the Biden-Harris administration and the 117<sup>th</sup> Congress to urgently prioritize making our federal judiciary more fair and just for all of us, including and especially for Black and Brown communities.<sup>10</sup>

There are nearly 100 vacancies on our Article III courts right now. These seats must be filled with judges who will work to protect and recognize the rights of everyday people over corporations and wealthy special interests. Our federal courts must recognize and uphold all of our rights, including workers' rights, immigrant rights, voting rights, disability rights, health care access, abortion rights, LGBTQ rights, separation of church and state, freedom from discrimination based on religion, and more. For our courts to work toward the promise of equal justice under law, there must be judges with different experiences and perspectives to make better-informed decisions and increase public confidence in our justice system.

If you have any questions, please contact Lena Zwarenstejn, senior director of the fair courts campaign, at [zwarenstejn@civilrights.org](mailto:zwarenstejn@civilrights.org).

Sincerely,



Wade Henderson  
Interim President and CEO



LaShawn Warren  
Executive Vice President for Government  
Affairs

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<sup>9</sup> Frey, William H., "[The nation is diversifying even faster than predicted, according to new census data.](#)" *Brookings Institute*. July 1, 2020

<sup>10</sup> To view all of the priorities of the Fair Courts Task Force and other task forces of The Leadership Conference coalition, please see <https://civilrights.org/the-presidential-and-congressional-transition/>.