

2022

ALLIANCE FOR JUSTICE

END-OF-YEAR REPORT

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A. Foreword

In 2022, Alliance for Justice (AFJ) continued the essential work of raising public awareness about the importance of the judiciary, advocating for ethical and impartial courts, and ensuring highly qualified professionally and demographically diverse federal judicial nominees are confirmed. To achieve this, we nurtured a vibrant advocacy community that works to uphold and advance the rights of all at the local, state and federal levels, while fighting for a future where our judicial system works for everyone, not just those with wealth, power, or privilege. In a year when an extreme Supreme Court systematically dismantled decades of progress by undoing many of our most cherished rights, AFJ has nevertheless proceeded—and succeeded—in rebalancing our federal courts with fair-minded jurists who are committed to equal justice for all.

B. Executive Summary

This report, issued at the end of the 117th Congress, examines the significant progress the Biden administration has made to repair our federal judiciary, including great strides in nominating candidates who are demographically and professionally diverse. Federal courts and the judges who serve on them are essential to the protection of our most important constitutional rights. The judiciary is often the last defense for Americans' civil rights and liberties, including voting rights, reproductive rights, health care, LGBTQ+ equality, equal opportunity in the workplace and education, and due process under the law. The federal judiciary also has an enormous impact on millions of Americans' lives through its application of laws surrounding corporate accountability, clean air and clean water standards, and more. Perhaps most significant in our democracy, federal judges are the only officials with lifetime tenure; consequently, their impact on the lives of the American people is felt long after the presidents who nominated them and the senators who recommended and confirmed them have left office.

President Biden has fundamentally remade the judiciary in his first two years in office. He appointed the first Black woman to the Supreme Court, Justice Ketanji Brown Jackson — a joyous, historic accomplishment. His work on the lower courts has been equally impressive. He has appointed more female and non-white judges than any of his predecessors, by a wide margin. Additionally, the Biden administration nominated more public defenders, civil rights lawyers, labor lawyers and plaintiff's side lawyers than any other administration. Over the past two years, the Senate has confirmed President Biden's nominees with remarkable speed, outpacing the Trump administration's confirmation record at this point in that presidency.

There is still much work to be done to surpass the Trump-McConnell record of 231 federal judges in four years. Thankfully, that work can be achieved since the 2022 midterms resulted in the Democrats maintaining control of the Senate. The Senate must continue to confirm equal justice champions as soon as possible if we are going to rebalance our judiciary in favor of the rights of all. That is why AFJ remained steadfast in our push for confirmations, even during the lame-duck session. With so many nominees still in the pipeline, AFJ has advocated for swift confirmation processes in order to ensure the Biden administration can fill every existing federal judicial vacancy with fair-minded, highly-qualified and diverse nominees.

This report also chronicles the positive impact Biden-appointed judges have already had on the fair administration of the nation's laws. Biden's judges have issued numerous well-reasoned decisions that affect important issues, including economic justice, civil rights, voting rights, disability rights, criminal justice, environmental justice, and immigrants' rights. Conversely, Trump-appointed judges have continued to issue opinions attempting to dismantle those rights, as the extreme conservative Supreme Court further erodes its legitimacy in the eyes of the public. The experiences that judges bring to the bench clearly influences legal outcomes, and those outcomes impact the lives of real people.

C. Introduction

AFJ's Justice Program tracks and monitors legislation and assesses federal judicial nominations to ensure our courts administer equal justice and are staffed with highly qualified, committed, and fair-minded judges that will safeguard the rights of all, not just the wealthy and powerful. In the best of circumstances, federal judges uphold the Constitution, place a check on overzealous legislatures, and help people find justice. Sadly, President Trump's judges have seriously undermined our nation's ability to achieve those fundamental objectives.

In response to the Trump-era confirmations, AFJ launched Building the Bench to identify and advocate for highly qualified demographically and experientially diverse nominees to be elevated to the federal courts at the earliest possible moment. We partnered with the Biden transition team, senators, state representatives, local community leaders and 35 organizations representing the vast range of the civil and human rights community. This includes regularly partnering with labor, civil and women's rights, LGBTQ+ individuals, immigrants, the environment, and consumers to identify potential future judges. Our goal was simple: to educate and encourage lawyers in non-traditional fields and underrepresented groups, who have dedicated their legal careers to the public interest, civil rights, and a fairer justice system, or have done significant pro bono work in those areas, to consider judgeships.

Once President Biden was inaugurated, we went to work with our partners and a range of stakeholders to confirm a historic number of federal judicial nominees during President Biden's first term. Collectively, we have outpaced the previous administration and nearly every other administration in recent memory.

To date, the Senate has confirmed 97 of President Biden's lifetime judicial nominees, compared to the 85 nominees President Trump's administration had confirmed at this point in his presidency. Just as important as the pace of these confirmations is the incredible record of this diverse group of nominees, many of whom spent their careers protecting and upholding civil and human rights. Of the 97 confirmations over the past two years, 73 are women, 46 are women of color, 29 were public defenders, and 12 were civil rights lawyers. Notably, President Biden has appointed more Black women to circuit courts as every other prior president in the history of our nation combined.

This remarkable progress for judicial diversity is a monumental accomplishment for the Biden administration and Senate leadership, who have transformed the courts for generations to come. In 2022, Senate Majority Leader Chuck Schumer and Senate Judiciary Committee (SJC) Chairman Dick Durbin made federal judicial nominations a top priority for the caucus. In doing so, the Democratic senators confirmed a historic number of nominees, keeping pace with the Trump administration's impressive confirmation numbers — despite holding the narrowest Senate majority possible. For example, after a Republican senator blocked consideration of two of President Biden's nominees in July 2022, Chairman Durbin and the Democratic senators on the SJC **threatened** to expand the number of district court nominees in each hearing in order to expedite the process. "President Biden and Senate Democrats have made it a priority to elevate highly qualified judicial nominees — and we've done so at an outstanding pace despite the unique constraints of an evenly divided committee and the longest 50–50 Senate in history," Chairman Durbin **emphasized**.

There is still much more work to be done. The Biden administration is still outpaced by the Trump administration when it comes to federal circuit court nominees, and there are still 59 federal judicial vacancies that do not have nominees to fill them. But we are clearly in the midst of a serious course correction for the federal judiciary. With each nomination and confirmation, we are closer to a judiciary that represents the diversity of experience in America and that ensures every person has equal access to justice. We know a diverse judiciary makes us stronger and that is why we will continue to push for more progress to add to the great strides we've made this year.

D. The Confirmation of Justice Ketanji Brown Jackson

One of the greatest highlights from this past year was the confirmation of Supreme Court Justice Ketanji Brown Jackson, the first Black woman and the first public defender to sit on the highest court in the land. On January 27, 2022, Justice Stephen Breyer announced his retirement. For the advocacy community, this was a crucial moment of truth for President Biden, who had [pledged](#) to nominate a Black woman to fill the next vacancy. AFJ sprang into action to support the administration in upholding its promise to the American people. We began preparing to assist the Senate at all levels of the nomination and confirmation process and became instrumental in conducting the initial research of exemplary Black women lawyers who possessed the exceptional experience and credentials necessary to serve on the Supreme Court.

Once Justice Jackson was formally nominated on February 25, we monitored and enthusiastically supported her confirmation process. In her time on the federal bench prior to her Supreme Court nomination, Justice Jackson demonstrated that she is a fair, impartial jurist who will uphold our constitutional values of liberty, equality, and justice for all. She protected the rights of working people, not just the wealthy and powerful. She demonstrated a mastery of complex administrative law issues relating to the [environment](#) and healthcare, including [Medicare](#) and [reproductive health](#). She applied civil rights laws to protect individuals from discrimination based on [disability](#), [race](#), and [religion](#). She adjudicated complex legal disputes about the power of the federal government, including [separation of powers](#) and [access](#) to government records. She applied her criminal law expertise, ruling for both the prosecution and criminal defendants in [Fourth Amendment](#) matters, carefully considering police officers' [defense](#) of qualified immunity, and remaining evenhanded and methodical in [sentencing](#).

Given her outstanding record on and off the bench, Justice Jackson won support from people of all walks of life. Along with receiving bipartisan support in every Senate confirmation, Justice Jackson's nominations to all levels of the federal judiciary, including the Supreme Court, were met with praise from across the ideological spectrum. When she was nominated to her district court seat in 2013, former Republican Speaker of the House Paul Ryan (R-WI) spoke at her Senate Judiciary Committee hearing, saying of Justice Jackson that while their "politics may differ . . . [his] praise for Ketanji's intellect, for her character, for her integrity, it is unequivocal." Justice Jackson's support at her circuit court nomination was similarly broad. She received recommendation letters from former federal prosecutors, **labor** unions, **civil rights** groups, and federal **judges** and clerks of a range of politics and perspectives. And her Supreme Court nomination was no different. Once again, statements of support from **public defenders, civil rights** groups, **law enforcement**, and federal **judges** appointed by Republicans and Democrats alike demonstrated the respect she has earned in her decades of legal practice and judicial service.

Justice Jackson was superb in her Supreme Court confirmation hearings. AFJ answered research requests from the Senate Judiciary Committee on Justice Jackson's background and judicial record. Our valuable feedback surfaced in Justice Jackson's confirmation hearings when senators asked informed questions and accurately praised her credentials. AFJ also was a go-to resource for our coalition partners for information on Justice Jackson's personal background, professional career, and judicial record.

Throughout more than 20 hours of questioning over two days, Justice Jackson defined the precise role of the judge — to review the facts and apply the law. Democratic senators lauded Justice Jackson's unimpeachable qualifications and the historic nature of her nomination. For example, Senator Cory Booker spoke about the joy of Justice Jackson's trailblazing nomination, letting the committee and the country know that **nobody could steal his joy**. He encouraged her to persevere in the face of ridiculous attacks, reminding her that she "got here how every Black woman in America has gotten anywhere... backward in [your] heels." In contrast, rather than focus on Justice Jackson's experiences as a trial and appellate judge or her well-rounded record on administrative law, criminal justice, and civil rights, Republican senators asked repetitive, disingenuous questions about her judicial philosophy and her sentencing decisions of the most abhorrent offenders, all of which Justice Jackson responded to with painstaking clarity and grace. Ketanji Brown Jackson was confirmed by a final vote of 53-47 on April 7, 2022.

Even so early in her tenure, Justice Jackson’s presence on the Court has already proven to be powerful and essential. In one of her first oral arguments, Justice Jackson asked probing **questions** in a Voting Rights Act challenge to Alabama’s proposed redistricting maps, which a lower federal court found violated Section 2 of the law by diluting Black voters’ influence. In a brilliant move, the first Black female justice flipped the conservative legal movement’s obsession with “history and tradition” as a binding legal principle on its head, pointing out that the history of the Voting Rights Act suggests it was a race-conscious statute implemented to help ensure that recently freed slaves were “actually brought equal to everyone else in society.” Justice Jackson also asked compelling **questions** in the oral arguments for challenges to Harvard College and the University of North Carolina’s race-conscious affirmative action policies, in which she voiced concerns that getting rid of affirmative action might create a scenario where some could express who they are and have that valued in the admittance process while others were limited, and could significantly hinder applicants of color from entering elite institutions. Even in her first written **opinion**, Justice Jackson demonstrated her thoughtful and direct approach to judging, writing clearly and concisely why the Court should not have denied certiorari of an appeal from an incarcerated person on death row.

E. Historic Confirmed Judges

AFJ knows that a diverse judiciary is a strong judiciary because a wealth of experiences and backgrounds enhance judges' fair-mindedness and promotes equity in decision-making. Diversity in the federal judiciary encompasses a wide array of experiential differences — including demographic details such as race and gender, but also professional variety such as experience in public defense or labor law. For too long, our federal district courts, circuit courts, and the Supreme Court of the United States have housed a homogenous group — both demographically and professionally — that does not reflect the rich diversity of experience in America or the legal profession. This year, the hard work of AFJ, the Biden administration, the Senate, and our coalition built upon the successes of President Biden's first year, continuing to change the landscape of the federal judiciary.

At the beginning of his presidency, President Biden **promised** to correct the unbalanced composition of the federal courts by appointing “federal judges who look like America” and who are “committed to the rule of law [and] understand the importance of individual civil rights and civil liberties.” In the second year of his administration, he has continued to uphold that promise. In 2022, the Biden administration made history and broke barriers with 75 phenomenal judicial nominees. The progress made in 2022 means that over the first two years of Biden's presidency, he has announced a total of 148 nominees to our federal courts, 97 of whom have been confirmed to the bench. Additionally, many of the judges nominated and confirmed by the Biden administration made history in their respective jurisdictions. Some highlights include:

- **Judge Roopali Desai (9th Cir., AZ)**
Became the first South Asian person to serve on the United States Court of Appeals for the Ninth Circuit.
- **Judge Arianna Freeman (3rd Cir., PA)**
A career public defender, became the first Black woman and the first woman of color to ever serve on the United States Court of Appeals for the Third Circuit.

- **Judge John Lee (7th Cir., IL)**

Became the first Asian-American judge to serve on the United States Court of Appeals for the Seventh Circuit.

- **Judge Nancy Maldonado (N.D. Ill.)**

Became the first Latinx woman to ever serve as a federal judge in the state of Illinois.

- **Judge Charlotte Sweeney (D. CO)**

Became the first openly LGBTQ+ woman to serve as a federal district court judge in any state west of the Mississippi River.

As mentioned, Justice Ketanji Brown Jackson, President Biden's first and only Supreme Court nominee thus far, is an especially noteworthy history-making nominee worthy of celebration. In 2021, she became the third Black woman to ever serve on the United States Court of Appeals for the District of Columbia. As mentioned previously, in 2022, she was sworn in as the **104th** Associate Justice of the Supreme Court of the United States — filling the seat vacated by retired Justice Stephen Breyer and making history as both the first Black woman and the first public defender to ever serve on the nation's highest court.

Even as we celebrate the accomplishments of 2022 and the progress made by the Biden administration, there is more work to do. We must both celebrate the rich diversity being added to our federal courts and continue to push for even greater inclusivity — particularly from historically underrepresented communities. In 2022, no Native Americans were nominated to the federal bench and Latinx nominees continue to be severely underrepresented in circuit nominations. Additionally, President Biden has only nominated two individuals with known disabilities during his presidency. We also need to continue striving for greater professional diversity on the bench, especially in the areas of labor law and economic justice, climate justice, women's rights and public defense.

1. Nominees

This year, the Biden administration nominated 75 potential judges to the federal bench, meaning that over his first two years in office, President Biden has made a total of 148 federal judicial nominations. This includes one Supreme Court nominee, 37 Circuit Court nominees, and 110 District Court nominees. In 2022 alone, the administration nominated one Supreme Court nominee, 21 Circuit Court nominees, and 53 District Court nominees.

A. Race

Out of the 75 nominees announced by the Biden administration in 2022, 49 are people of color, about 65% of all nominations this year. Of those, 24 are Black, 12 are Asian American/Pacific Islander, and 15 are Latinx. There were no Native American nominations to the federal bench in 2022.

Racial Diversity Among Biden Nominations 2021-2022

	2021	2022	Total
Black	20	24	44
AAPI	13	12	25
Latinx	14	15	29
Native American	3	0	3

B. Gender

Forty-four, or 59%, of the Biden administration’s 75 nominations in 2022 are women. Of those 44 nominees, 15 are Black, seven are Asian American/Pacific Islander, and ten are Latinx. Additionally, two of the women nominated identify as LGBTQ+ and one has a disability.

Gender Diversity Among Biden Nominees 2021-2022

	2021	2022	Total
Total Women	53	44	97
Black Women	15	15	30
AAPI Women	10	7	17
Latinx Women	6	10	16
Native American Women	3	0	3
LGBTQ+ Women	4	2	6
Women With Disabilities	0	1	1

C. Professional Diversity

In 2022, the Biden administration nominated 16 public defenders, 12 civil rights lawyers, three labor lawyers and four plaintiffs'-side lawyers to the federal bench.

Professional Diversity of Biden Nominees 2021-2022

	2021	2022	Total
Public Defenders	22	16	38
Civil Rights Lawyers	14	12	26
Labor Lawyers	1	3	4
Plaintiffs' Lawyers	9	4	13

2. Confirmed Judges

In 2022, the United States Senate confirmed 57 judges nominated by the Biden administration. This brings the overall number of judges confirmed under the Biden administration up to 97 from 40 at the end of 2021. This includes one Supreme Court justice, 28 circuit court judges, and 68 district court judges.

A. Race

In 2022, 38 of the 57 judges confirmed to the federal bench are people of color, about 66% of all confirmed judges this year. Of those 38, 19 are Black, seven are Asian American/Pacific Islander, 12 are Latinx, and one is Native American.

Racial Diversity Among Biden Confirmed Judges 2021-2022

	2021	2022	Total
Black	12	19	31
AAPI	10	7	17
Latinx	7	12	19
Native American	2	1	3

B. Gender

Overall, 41 (72%) of the Biden administration's 57 nominees confirmed to the federal bench in 2022 are women. Of those 41, 13 are Black, four are Asian American Pacific Islander, eight are Latinx, and one is Native American. Additionally, three confirmed woman judges identify as LGBTQ+. None of the women confirmed to the federal bench this year have disabilities.

Gender of Biden Confirmed Judges 2021-2022

	2021	2022	Total
Total Women	32	41	73
Black Women	10	13	23
AAPI Women	9	4	13
Latinx Women	3	8	11
Native American Women	2	1	3
LGBTQ+ Women	1	3	4
Women With Disabilities	0	0	0

C. Professional Diversity

One of the most notable confirmations this year — that of Justice Ketanji Brown Jackson — was a pivotal moment for professional diversity in the federal courts because it put the first public defender on the Supreme Court. In addition to that significant confirmation, 2022 saw the ascension of 14 public defenders, 5 civil rights lawyers, and 3 plaintiffs'-side lawyers to the federal bench.

Professional Diversity of Biden Confirmed Judges 2021-2022

	2021	2022	Total
Public Defenders	15	14	29
Civil Rights Lawyers	7	5	12
Labor Lawyers	1	0	1
Plaintiffs' Lawyers	7	3	10

3. Pivotal Confirmations of 2022

The many new judges added to our courts this year demonstrate that we are in the midst of a much-needed shift away from the wholly unrepresentative judiciary of the past. The progress we made in 2022 is just part of a larger pivot towards a judiciary that better reflects the rich diversity of experience in America.

The following are phenomenal examples of this progress:

1. Judge Lara Montecalvo

(United States Circuit Court of Appeals for the First Circuit)



On May 19, 2022, President Biden nominated Judge Lara Montecalvo, who has spent nearly her whole career at the Rhode Island Public Defender’s Office, to the United States Court of Appeals for the First Circuit. After working as a trial lawyer with the U.S. Department of Justice Tax Division for four years after law school, she joined the Rhode Island Public Defender’s Office as a trial attorney. As a trial attorney, Judge Montecalvo represented individuals charged with a wide range of misdemeanors and felonies and appeared in court nearly every day. In 2014, she became Chief of the Appellate Division and argued appeals in over 65 Rhode Island Supreme Court cases while supervising more than 80 additional appeals. In 2020, Judge Montecalvo was appointed to the position of Chief Public Defender. As Chief Public Defender, she continued to litigate cases, supervised a staff of nearly 100, and managed the Office’s legal, policy, and programmatic strategy. On September 14, 2022, the Senate confirmed Judge Lara Montecalvo to the United States Court of Appeals for the First Circuit.

2. Judge Arianna Freeman

(United States Court of Appeals for the Third Circuit)



President Biden nominated Judge Arianna J. Freeman to the United States Court of Appeals for the Third Circuit on January 19, 2022. Judge Freeman, who graduated from Yale Law School, has dedicated her entire legal career to public service at the Federal Community Defender Office for the Eastern District of Pennsylvania. During her more than thirteen years at the Federal Community Defender Office, Judge Freeman represented hundreds of indigent clients at both the trial and appellate level, ensuring their constitutional and statutory rights were protected throughout the criminal justice process. She also litigated more than 100 post-conviction matters to judgment in the U.S. District Court for the Eastern District of Pennsylvania and frequently appeared as counsel of record in the U.S. Court of Appeals for the Third Circuit. Additionally, Judge Freeman filed briefs in more than fifteen appeals and presented oral arguments seven times — including once to the Third Circuit sitting en banc. On September 29, 2022, the Senate confirmed Judge Arianna J. Freeman to the United States Court of Appeals for the Third Circuit. Upon her confirmation, she became the first Black woman — and the first woman of color — to ever serve on the Third Circuit, which has jurisdiction over more than six million people of color but has only ever had seven judges of color.

3. Judge John Z. Lee

(United States Court of Appeals for the Seventh Circuit)



President Biden nominated Judge John Lee to the United States Court of Appeals for the Seventh Circuit on April 25, 2022. Judge Lee was born in Aachen, Germany in 1968 and spent his early childhood in South Korea. When he was four years old, his family immigrated to the United States and settled in Chicago. After law school, Judge Lee worked as a trial attorney in the Environmental and Natural Resources Division of the Department of Justice. He then worked in private practice with Mayer Brown, then Grippio & Elden LLC and then Freeborn & Peters LLP, where he became partner. While in private practice, Judge Lee represented clients in complex commercial disputes, including cases involving antitrust, intellectual property, environmental, employment, and business torts issues. He also represented several low-income clients on a pro bono basis, such as a forklift operator alleging age discrimination in violation of the Age Discrimination in Employment Act and a disabled individual suing a condominium association for violations of the Fair Housing Act. Judge Lee has been a judge on the U.S. District Court for the Northern District of Illinois since 2012. He was the first Korean American ever to serve as an Article III federal judge in the Northern District and only the second Korean American to serve as a federal district court judge. When the Senate confirmed Judge John Z. Lee to the United States Court of Appeals for the Seventh Circuit on September 7, 2022, he became the first Asian-American judge in the court's history.

4. Judge Gabriel P. Sanchez

(United States Court of Appeals for the Ninth Circuit)



On September 20, 2021, President Biden nominated Judge Gabriel P. Sanchez to the United States Court of Appeals for the Ninth Circuit. While an associate at Munger, Tolles & Olson LLP, where he litigated a wide range of civil matters at the trial and appellate levels, he had an active pro bono practice and represented indigent individuals, tenants, undocumented students, and farmworkers. In one case, Judge Sanchez challenged the state of California for failing to live up to its constitutional and statutory duties to protect farmworkers after they were denied access to drinking water, rest breaks, and shade while working in extreme heat. His work, which earned him the ACLU's Social Justice Award, ultimately led to strengthened heat-related safety standards for farmworkers. Following his time in private practice, Justice Sanchez worked for seven years in state government, where he was charged with overseeing state compliance with constitutional prison obligations, as well as implementing sweeping changes to California's criminal justice system. From 2012 to 2018, he served as Governor Edmund G. Brown's Deputy Legal Affairs Secretary and was a senior advisor on corrections and criminal justice matters, which included justice reform legislation. He was a principal author of California's landmark Public Safety and Rehabilitation Act of 2016. In 2018, he was appointed as an Associate Justice of the California Court of Appeal, First Appellate District. On January 12, 2022, the Senate confirmed Judge Gabriel P. Sanchez to the United States Court of Appeals for the Ninth Circuit.

5. **Roopali Desai**

(United States Circuit Court of Appeals for the Ninth Circuit)



On June 15, 2022, President Biden nominated Judge Roopali Desai to the United States Court of Appeals for the Ninth Circuit. Born in Toronto, Canada to East Indian parents, Judge Roopali H. Desai settled with her family in Phoenix, Arizona as a child. She is a triple graduate with honors of the University of Arizona, earning her B.A. in 2000, M.P.H. in 2001, and J.D. in 2005. Judge Desai began her legal career clerking for Judge Mary Schroeder on the U.S. Court of Appeals for the Ninth Circuit. After her clerkship, Judge Desai joined Lewis & Roca LLP where she engaged in complex civil litigation in state and federal court; advised organizational clients and school districts on matters including open meeting laws and public records; and served as pro bono counsel representing an incarcerated individual in a Prison Litigation Reform Act case. In 2007, Judge Desai joined Coppersmith Brockelman PLC as an associate where she developed an expertise in constitutional law, election law, public law, and campaign finance. She was promoted to partner in 2013 and began leading the firm's elections, political, and public law practice group in 2014. Judge Desai also served as a Professor of Practice at her alma mater, the University of Arizona James E. Rogers College of Law. Additionally, she dedicated thousands of hours to pro bono work relating to children in foster care, voting rights, and public education, among other issues. On August 4, 2022, Judge Desai was confirmed to the United States Court of Appeals for the Ninth Circuit, becoming the first South Asian person to serve on that court.

As we come out of 2022, let's use last year's victories and history makers to strengthen our resolve to confirm even more exceptional nominees in the new year. We must continue to build a judiciary that reflects America's people and America's values so that every person in this country can access justice.

F. Impact of Biden Judges

The ripple effect of the Biden administration's efforts to nominate diverse judges committed to the rule of law is already being felt around the nation. Federal judges nominated by President Biden and confirmed by the Senate have already started demonstrating their commitment to justice. Across the country, Biden judges issued important rulings for individual litigants and precedential appellate decisions impacting our rights at large. Below are some examples of the most impactful decisions written or voted for by Biden judges that will affect workers' rights, civil rights, immigration, criminal justice and environmental justice issues:

1. Workers' Rights

Workers deserve to be treated with dignity in the workplace and deserve justice when their hard-won rights are trampled upon by their employers. In a country governed by the people and for the people, it is critical that judges value workers, not just the rich and powerful. Several judges appointed by President Biden have upheld workers' rights in the last two years and, in doing so, supported the backbone of American communities.

Prior to joining the high court, Justice Jackson was elevated to the D.C. Circuit Court of Appeals by President Biden, where she proved to understand the value of workers' rights. In February 2022, Justice Jackson authored her first D.C. Circuit opinion for a unanimous panel in [*American Federation of Government Employees v. FLRA*](#). The Federal Labor Relations Authority (FLRA) had long required collective bargaining for any workplace changes that had more than a "de minimis effect" on workplace conditions. In September 2020, the agency adopted a heightened standard that required bargaining only in situations that have a "substantial impact on a condition of employment." The court ruled that the FLRA's new threshold for collective bargaining was not sufficiently reasoned and thus was arbitrary and capricious, in violation of the Administrative Procedure Act. Accordingly, the court granted labor unions' petitions for review and vacated the new FLRA policy, ensuring that most workplace condition changes go through the collective bargaining process. This rule would have allowed agency managers to "pile on extra hours, limit telework, cut comp time, and slash benefits" unilaterally — without negotiating with workers' representatives. Instead, Justice Jackson and the D.C. Circuit protected workers' rights to collectively bargain.

In *Jarnutowski v. Kijakazi*, newly appointed Judge Candace Jackson-Akiwumi authored a 2-1 decision that gave Donna Jarnutowski, the plaintiff, another opportunity to prove that she has a disability and therefore cannot return to her old job. An administrative law judge had found that a foot condition prevented Jarnutowski from working as a store's department manager. However, he concluded, without adequate explanation, that after additional surgery, Ms. Jarnutowski could "lift or carry objects more than twice the weight" as before the surgery. The Seventh Circuit determined that the administrative law judge failed to "build a 'logical bridge' from the evidence" to the conclusion and gave Ms. Jarnutowski another chance to prove her disability claims. Judge Michael Brennan, appointed by President Trump, dissented in the case and would have upheld the denial of the worker's disability claims.

In *Stamey v. Forest River*, Judge Jackson-Akiwumi cast the deciding vote overturning a decision made by a Trump-appointed district judge in an age discrimination case. The Seventh Circuit panel held that a worker who provided evidence that he faced continual age discrimination should have the opportunity to let a jury hear his case. The plaintiff, Sam Stamey, claimed he suffered a "relentless and ruthless campaign of age-based harassment" including repeated "old age insults" and malicious acts that interfered with his work. Judge Michael Brennan, a Trump appointee, dissented and would have upheld the ruling throwing out the worker's claim. Jackson-Akiwumi's vote not only allowed Mr. Stamey to continue with his age discrimination claim, but it also set a precedent for workers' rights in states within Seventh Circuit jurisdiction, including Wisconsin, Illinois, and Indiana.

2. Civil Rights

Despite the strength of our civil rights and their enshrinement in our Constitution, partisan judges pushing radical agendas have attempted to strip us of those cherished rights in recent years. Most notably in 2022, the Supreme Court disregarded half a century of precedent to overturn the right to abortion in *Dobbs*. While it is too soon for Biden appointees to have addressed abortion access, they have been hard at work upholding other civil rights protected by the Constitution.

In *Watters v. Homeowners Assn*, Judge Jackson-Akiwumi also wrote a 2–1 decision that gave a Black couple, who were the only people of color in their Indiana community, the opportunity to prove their claim of racial discrimination to a jury. The Watters sued the Homeowners’ Association and several of its members for race discrimination and failure to accommodate Terence Watters’ post-traumatic stress disorder under the Fair Housing Act and 42 U.S.C. § 1982. The evidence in the case revealed significant harassment against Tonca and Terence Watters, including the president of the homeowners’ association calling them vile racist slurs. The lower court granted summary judgment in favor of all defendants on all counts. The Seventh Circuit vacated the court’s judgment and allowed the couple to let a jury decide their case. Judge Amy St. Eve, appointed by President Trump, dissented and would have upheld the dismissal of the Watters’ complaint.

In *Peltier v. Charter Day School*, Judge Toby Heytens was part of a Fourth Circuit panel that determined that a North Carolina public charter school’s dress code requirements for female students may be discriminatory in violation of the Equal Protection Clause of the Fourteenth Amendment and Title IX. Charter Day School requires female students to wear skirts to school, based on the view that girls are “fragile vessels” deserving of “gentle” treatment by boys. The plaintiffs argued that the sex-based classification grounded in gender stereotypes subjects the female students to discrimination in violation of the Equal Protection Clause and denies them of the full benefits of their education in violation of Title IX. The Fourth Circuit majority affirmed the lower court’s entry of judgment in favor of the plaintiff’s claim that the dress code violated the U.S. constitution and overturned the lower court’s decision to dismiss the Title IX claim, allowing that claim to move forward.

In *Chilcoat v. San Juan County*, Judge Veronica Rossman authored a 2-1 decision for the Tenth Circuit Court of Appeals that allowed Rosalie Chilcoat, an environmental activist, to amend her complaint that alleged a county commission retaliated against her by holding a “secret, closed meeting” and “getting a county attorney to file criminal charges against her” because of her political views. Although the government ended up withdrawing criminal charges against her, Ms. Chilcoat wanted to hold the officials accountable for their alleged misconduct. Judge Joel Carson, a Trump appointee, dissented in the case and would not have given her that opportunity. The Tenth Circuit ruling in this case established a precedent for federal courts in Colorado, Kansas, New Mexico, Oklahoma, Utah, and Wyoming.

Biden-nominated Judge Katherine Menendez, sitting by designation, joined the Eighth Circuit Court of Appeals in *Brandt v. Rutledge*, a critical decision upholding the rights of LGBTQ+ minors. The case concerned Act 626, an Arkansas law that would prohibit healthcare professionals from providing critical gender-affirming care to minors. Transgender children, their parents, and healthcare professionals filed suit claiming that the law violated the Equal Protection Clause of the Fourteenth Amendment. They argued that Act 626 discriminated against transgender youth on the basis of sex and their gender status, that the law interfered with parents’ fundamental right to seek medical care for their children, and that Act 626 violated physicians’ first amendment rights by limiting what they could say to parents and children seeking care. Judge Menendez affirmed the lower court’s decision not to dismiss the lawsuit at the request of Arkansas, allowing the plaintiffs to proceed. She plainly rejected Arkansas’s argument that Act 626 makes a distinction on the basis of medical procedure rather than sex or gender. Thanks to Judge Menendez and others on the Eighth Circuit, transgender children and their families can continue to receive the care they need while continuing to fight for their right to healthcare.

3. Voting Rights and the Health of Our Democracy

It is no secret that voting rights are under attack. Voting is the cornerstone of our democracy and is central to ensuring power remains with the people. From attempts to undermine the Voting Rights Act of 1965 and hijack elections at the Supreme Court to state courts entertaining election denier claims, it is more important than ever that we have federal judges who value the sacred right to vote and who won't allow partisan politics to influence their opinions.

In *Cawthorn v. Amalfi*, Fourth Circuit Court of Appeals Judge Toby Heytens wrote a decision holding that states and citizens can bar individuals from holding public office who have taken part in an insurrection, such as the attack on the United States Capitol on January 6th, 2020. In this case, voters claimed that the Fourteenth Amendment barred former Congressman Madison Cawthorn from running for office again because he had “engaged in insurrection or rebellion” by encouraging the mob on January 6. The outcome of this case may be important in disqualifying other January 6 insurrectionists from running for office. Judge Heytens overruled a Trump-appointed district judge who had ruled in Cawthorn’s favor. Another Trump-appointee on the Fourth Circuit partially dissented in the case.

Additionally, in *Grimmett v. Freeman*, Judge Heytens cast the deciding vote on the Fourth Circuit Panel to prevent a grand jury investigation concerning a negative campaign ad run by the Democratic North Carolina Attorney General candidate, Josh Stein. Stein’s opponent claimed that the ad violated a criminal libel statute. The Court found that the libel law likely violates the First Amendment and paused prosecution of the case pending an appeal of that issue, despite a Trump-appointee’s dissenting opinion.

4. Disability Rights

Every American, regardless of disability status, is entitled to live a full life and be treated with dignity. On the heels of the COVID-19 pandemic, the focus on disability rights has only grown more urgent. It is critical that judges on the federal bench understand the significance of the Americans with Disabilities Act and other similar legislation that protects the interests, rights, and dignity of Americans with disabilities.

Judge Beth Robinson, nominated by President Joe Biden in 2021, sat on the panel that heard *Laguerre v. Nat'l Grid USA*, a disability rights case in which the plaintiff, a customer service representative for the defendant, alleged that her employer discriminated against her on the basis of her disability. When the plaintiff, who has lupus, requested to work remotely and to be transferred to a less-stressful position due to her chronic illness, the company denied her requests. She claimed that by doing so, her employer had violated numerous laws including the Americans with Disabilities Act. After the district court granted summary judgement to the plaintiff's employer, she appealed the decision, bringing the case before Judge Robinson and her colleagues. Judge Robinson found that, because the plaintiff didn't identify an open position that was less stressful, she did not meet her burden of proof under the Americans with Disabilities Act to avoid summary judgement on her request for a less stressful position. However, the plaintiff did meet her burdens with her request to work from home, which the court found would be a reasonable accommodation considering her disability. Because she could continue to perform the essential functions of her position and that the technology for her to do so was obtainable for her employer, the court remanded the case back to district court for further proceedings. This decision breathed life back into the plaintiff's case, allowing her to continue pursuing justice as a person with a disability and equitable treatment in her workplace.

In another disability rights case, *Kiran v. Kijakazi*, Judge Jennifer Sung, another Biden nominee, allowed a plaintiff with major depressive disorder, panic disorder, agoraphobia, social anxiety disorder, and post-traumatic stress disorder to obtain disability benefits. Despite the plaintiff's physician asserting that the plaintiff would be unlikely to maintain long-term full-time employment because of her conditions, an administrative law judge upheld the denial of her application for disability benefits through Social Security. That judge found that, while the plaintiff did suffer from disabilities limiting her job opportunities to ones with no regular contact with other people, she could still perform jobs such as folding laundry. Therefore, she was denied disability benefits. In making this decision, the administrative law judge discounted the plaintiff's own testimony as inconsistent without pointing out what those inconsistencies were and did not adequately consider the testimony of the plaintiff's friends and family. Judge Sung, joined by two other judges, reversed the lower court's decision and awarded disability benefits to the plaintiff.

5. Criminal Justice

Two of the most powerful aspects of the American legal system are our notion of "innocent until proven guilty" and our belief that every defendant is entitled to adequate representation and due process rights in the courtroom. It is critical that judges see defendants as human beings first and ensure that every case is fairly adjudicated.

In *US v. Buster*, Judge Heytens of the Fourth Circuit Court of Appeals wrote a decision that expanded Fourth Amendment privacy protections against unreasonable searches and seizures. Under constitutional jurisprudence, police officers can search a suspect without a warrant if that search is justified to protect the officers from threats posed by a suspect who may be armed and presently dangerous. In this case, the Fourth Circuit found that this doctrine could not be stretched to cover a warrantless search of a bag recently possessed by a person who was — by the time the bag was opened — handcuffed and face-down on the ground. Many argue that police officers are given too much leeway in conducting warrantless searches and this ruling constitutes an important win for advocates of expanding privacy protections, especially for citizens of over-policed populations. The only judge to dissent in the case was Trump-appointed Julius Richardson.

In *Emanuel v. Neven*, Judge Koh of the Ninth Circuit Court of Appeals was the deciding vote in a case where the court allowed a defendant to pursue a claim of ineffective counsel after the defendant claimed his attorney improperly coerced him into taking a guilty plea. The defendant claimed that his trial attorney provided ineffective assistance by misleading the defendant about the details of his plea deal. The case was originally in Nevada state court, where the defendant claimed that certain state court procedural rulings prevented him from undertaking meaningful factual development. For example, the state court actually appointed the attorney who was the subject of the defendant's ineffective assistance of counsel claims to represent the defendant — clearly a conflict of interest. Additionally, the state court improperly prevented one of the defendant's key witnesses in the ineffective assistance of counsel claims from testifying. The Ninth Circuit found that, since the defendant was precluded from developing facts related to his ineffective assistance of counsel claims, the defendant was permitted to go forward with his federal appeal. Again, a Trump-appointee was the only dissenter in the case.

6. Immigrants' Rights

Throughout the United States' history, the nation has been strengthened by the contributions of immigrants who came here seeking new opportunities and refuge from violence. During the last administration, the rights and opportunities of both documented and undocumented immigrants and migrants were under attack. Thankfully, judges appointed by President Biden have been reversing that trend and restoring the promise of America to immigrants and refugees.

In *Julmice v. Garland*, the plaintiff applied for a visa only offered to the unmarried children of U.S. citizens, but his request was denied because he misrepresented his marital status on the application. This misrepresentation made him eligible for removal proceedings. The plaintiff requested that the attorney general waive his removal, which the attorney general has the power to do for a family member of a United States citizen. An immigration judge found that the plaintiff was not eligible for this waiver because his only family member with citizenship status, his father, had passed away. The plaintiff appealed this decision to the Board of Immigration Appeals, which affirmed the lower ruling against him. Both the immigration judge and the Board relied on a 2008 decision that found a U.S. citizen relative must be living in order to qualify for a removal waiver. Judge Toby Heytens, a Biden nominee, restored the plaintiff's hopes for a waiver by reversing the Board's decision and allowing the plaintiff's appeal to continue. In his opinion, Judge Heytens found that there is no statutory justification for interpreting the law to only allow waivers for the family members of living U.S. citizens rather than deceased citizens as well, easing the path for more waiver seekers to avoid removal from the United States.

In another immigration case, *Casimiro Santiago v. Garland*, Judge Eunice Lee vacated a Board of Immigration Appeals decision denying protection to an LGBTQ+ immigrant under the Convention Against Torture. The Convention Against Torture shelters applicants who can demonstrate that they would likely be tortured by or with the approval of government officials if removed from the United States. In this case, the plaintiff, an indigenous gay man and advocate for transgender rights, argued that he would be in danger of torture by or with the approval of government agents if the U.S. government removed him to Mexico. However, the Board of Immigration Appeals found that the plaintiff hadn't adequately demonstrated that he would be in such danger because the murderers of the plaintiff's brother, who was also gay, had been prosecuted and because of an unrelated story about a police investigation into the disappearance of 43 student protesters in Mexico. Judge Lee and her peers did not find this reasoning conclusive; instead, the decision totally disregarded a Mexican police superintendent's letter stating the plaintiff would not be safe from violence in Mexico, evidence of police involvement in violence against sexual minorities and indigenous people in Mexico, and the heightened risk to the plaintiff for his advocacy for the transgender community. Because the Board relied upon speculation and failed to consider material evidence of violence against LGBTQ+ and indigenous Mexicans, the court vacated the Board's decision and remanded the case for further proceedings, giving the plaintiff another chance at safely remaining in the United States.

7. Environmental Justice

Climate change is one of the most critical challenges and greatest threats of our time. It is imperative that we have federal judges who both understand the significance of environmental justice and who respect both environmental law and the integrity of science. All Americans deserve safe drinking water, clean air, and a thriving planet. Fortunately, there are promising signs that Biden nominated judges are respect the rule of law when it comes to the environment and cannot be bought by the rich and powerful or partisan politics.

In *Naturaland Trust v. Dakota Finance, LLC*, Judge Heytens and his peers were tasked with determining whether a private party could bring a claim under the Clean Water Act if a government actor had already served the would-be defendant with notice of a violation regarding the Clean Water Act. Here, a farm developer discharged large amounts of sediment into water in the surrounding area, causing erosion and pollution. State regulators were alerted to this issue and sent the farm a notice of alleged violations of the Clean Water Act. Two months later, Naturaland Trust and Trout Unlimited, two nonprofit organizations, sent a notice to the farm and then filed suit under the Clean Water Act after a 60-day waiting period. The Clean Water Act bars citizen suits when the state is already engaging in litigation against a defendant related to a violation, but Judge Heytens made clear that by simply giving notice of the violation, the state administrative agency had not begun prosecuting the violation. Thus, in a victory for environmental justice and the power of non-governmental actors to incite change, the citizen suit was allowed to continue.

G. Monitoring Trump Judges

Supreme Court Preview

Alliance for Justice is also keeping a close eye on the Supreme Court, which has already heard numerous cases that will have lasting impacts on our democracy. Last year, the conservative majority did not hesitate to demonstrate its dedication to reversing progress by rolling back many of our most cherished rights through key decisions, such as *Dobbs*. While that doesn't bode well for the critical and long-standing rights on the chopping block this year, there is still reason to hope. With Justice Ketanji Brown Jackson on the court we can look forward to seeing her impact in the decisions to come. Justice Jackson is a reminder that no matter how hard the far right tries to push us back, progress will always continue.

Here are the cases we are watching and what they could mean for all of us:

1. *Students for Fair Admission (SFFA) v. Harvard and SFFA v. UNC*

The previously consolidated cases from Harvard University and University of North Carolina could have serious implications for affirmative action and racial justice. Both cases were brought by anti-civil rights radical Edward Blum as part of a larger effort to end holistic, race-conscious admissions policies that have been upheld by the Supreme Court for decades. The cases, brought by Asian-American plaintiffs recruited by Blum, are attempts to drive a wedge in inter-racial solidarity and attack race-conscious policies and programs that facilitate opportunities for all people of color.

2. *Sackett v. Environmental Protection Agency*

A decision against the Environmental Protection Agency (EPA) in this case could significantly limit the agency's power under the Clean Water Act (CWA). Petitioners, who initially came before the Court in 2012, are asking the Court to resolve a conflict about the definition of "water of the United States" under the CWA. A narrower definition of the term, proposed by former Justice Scalia and favored by conservatives, would limit the EPA's ability to fight pollution and keep our waters and communities safe.

3. *303 Creative LLC v. Elenis*

This case involves a Colorado graphic designer who wants the right to refuse service to same-sex couples in the creation of wedding websites. A decision in favor of the designer would invalidate the Colorado law prohibiting discrimination against LGBTQ+ customers, as well as any other state laws that provide similar protections, giving business owners an unfettered right to discriminate.

4. *Brackeen v. Haaland*

This case challenges the Indian Child Welfare Act (ICWA), a 43-year-old federal law passed in the wake of decades of state-led, anti-tribal forced separation of Native American children from their families. Texas is challenging the constitutionality of ICWA, arguing that it constitutes federal overreach. A decision in favor of Texas would have a devastating impact on Native families and tribal sovereignty.

5. *Moore v. Harper*

This redistricting case out of North Carolina could have serious implications for voting rights and the future of our democracy itself. If the Court accepts the radical “independent state legislature” theory, it will effectively allow state legislatures to set their own rules for presidential and congressional elections and strip state courts of the power to strike down anti-democratic laws.

6. *Merrill v. Milligan*

A federal district court held that Alabama’s 2021 redistricting plan violated the Voting Rights Act (VRA) by diluting Black votes. In a shadow docket order last term, the Supreme Court temporarily reinstated the discriminatory maps. Now, it’s set to decide whether to make its order permanent. The Court’s decision could make it so gerrymandered maps are in place until the next redistricting cycle begins in the 2030s, also severely diluting voter power.

Harmful Trump-appointed Judge's Decisions

This past year, we have also continued to witness disastrous decisions made by jurists appointed during the Trump administration — rulings that undermine access to health care, reproductive freedom, voting rights, workers' rights, LGBTQ+ rights, immigrants' rights, racial justice, and gun safety. Trump appointees have also assisted the former president in undermining the rule of law and the democratic system.

For example, U.S. District Court Judge Aileen Cannon faced sharp **criticism** after she issued orders that delayed a criminal investigation into the man who appointed her, former President Trump. Experts **questioned** her legal reasoning and criticized language in her opinion about what rights a former president is entitled to. Unfortunately, these types of judicial decisions — legally specious and ethically suspect — undermine public trust that federal judges are unbiased arbiters of justice. These decisions also highlight the importance of minimizing the impact of the Trump administration's record confirmations by beating that record. And, while the Eleventh Circuit Court of Appeals **reversed** Judge Cannon's decisions in the case, she still managed to delay the administration of justice and allowed Trump to drag out the legal process.

With two more years in office, President Biden has the opportunity to fill every vacancy on the federal judicial bench. Those judges must continue to be professionally and demographically diverse jurists who not only respect the rule of law but will commit to following the rule of law on the federal bench. While the damage done by the Trump administration can't be undone, we can turn the tide to ensure that our cherished, well-established rights do not continue to be diminished.

H. Conclusion

We have so much to celebrate this year. We saw continued confirmations and nominations of phenomenal nominees from all sectors of the legal profession with varied and diverse backgrounds and stories, such as our first Black woman Supreme Court justice and the Biden administration's first two judicial nominees with disabilities. To date, the Senate has confirmed 97 of President Biden's lifetime judicial nominees, a majority of which were women and people of color. And Biden judges started to turn the tide of rolled away rights and roadblocks to justice that we've seen in recent years, including on issues like worker's rights, voting rights, civil rights, immigration, criminal justice, and environmental justice.

However, there is still more work to do. While the Supreme Court continues to issue opinions and hear cases that undermine our basic freedoms, the same radical push being echoed by district and circuit courts across the country. It is more urgent than ever before to confirm impartial, fair-minded judges who are guided by equal justice for all rather than a partisan political agenda.

Given Democrats maintained the Senate after the midterm elections, President Biden and the SJC have a greater chance to match or surpass Trump's mark of having 231 judicial nominees confirmed over four years. Indeed, by gaining a vote in the Georgia runoff, it will be even easier for Senate Democrats to move nominees through the committee and confirm them.

AFJ will continue to support well-qualified nominees and advocate for their confirmations. While we celebrate the rich diversity being added to our federal courts and continue to push for even greater inclusivity — particularly from historically underrepresented communities, such as Native Americans and Latinx communities — we also need to continue to push for greater professional diversity on the bench, especially in the areas of labor law and economic justice, climate justice, women's rights and public defense. Additionally, AFJ will also push the Senate to cease the practice of honoring home-state senators' "blue slips" for federal judicial nominees.

When it comes to progress, legislation and good candidates only go so far. As we have painfully learned in recent years, all it takes is one bad judge to uproot a good law. We need judges from all corners of the legal profession and from a wealth of backgrounds. We need immigrants, public defenders, people of color, labor lawyers, women, civil rights advocates, and people with disabilities on the federal bench. Next year, we are going to continue our tireless march towards a better judiciary because we know that the work of progress is never over. We will continue to build a vibrant democracy that values and protects justice and equity. We will continue to champion and secure a federal judiciary where all voices, regardless of wealth, power, or privilege, are heard and valued.