

2023



COURTING CHANGE:

**2023 MOMENTUM FOR
MOVEMENT LAW**



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Executive Summary:

This report assesses the Biden administration's most notable strides toward revitalizing our federal judiciary over the past calendar year. These achievements include not just continued commitment to the selection of nominees who exhibit both demographic and professional diversity but also an emphasis on the elevation of movement lawyers, whose careers reflect dedication to public service and the protection and expansion of civil and human rights.

While the Supreme Court gets the most press nationally, it's the lower federal courts that do the most to shape people's lives in the United States.

Federal courts and the judges who preside over them play a crucial role in safeguarding our fundamental constitutional rights. The judiciary serves as a safeguard for the civil liberties and rights of Americans, encompassing crucial aspects of American life such as voting rights, reproductive rights, healthcare, LGBTQ+ equality, equal opportunities in employment and education, and the guarantee of due process. And while the Supreme Court gets the most press nationally, it's the lower federal courts that do the most to shape people's lives in the United States. **For context**, from March 2022 to March 2023, people filed over 350,000 cases in district courts — federal trial courts. About a tenth as many cases, more than 40,000, were appealed to a U.S. Court of Appeal, of which there are 13. The Supreme Court only takes cases of original jurisdiction, a tiny category; appeals from states' highest courts, when a constitutional issue is in play; and appeals from federal appellate courts, usually in the case of a disagreement among appellate courts. Each year, the justices only accept about **100-150 of the more than 7,000 cases** the Supreme Court is asked to review.



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The importance of the federal judicial ecosystem as a whole is what makes President Joe Biden's achievements in this space so significant. During just his first three years in office, Biden initiated historic transformations to the judiciary. While the Senate has only confirmed 166 of President Biden's lifetime judicial nominees, compared to the 187 nominees President Donald Trump's administration had confirmed at this point in his presidency, the accomplishments, record, and caliber of the diverse group of judges Biden has appointed distinguishes them handily. These confirmations featured a diverse group of nominees — the majority of whom spent some or all their legal careers protecting, upholding, and advancing civil and human rights. Of the 166 judges confirmed over the past 3 years, 108 are women, 73 are women of color, 37 served as public defenders, and 24 have practiced civil rights law.

Before taking office, President Biden **vowed to make the federal judiciary more diverse**. He committed to appointing a higher proportion of federal judges with personal and professional attributes representative of the parties that come before our federal courts — and we are pleased to say that he followed through on this promise.



Some Key Confirmation Highlights Include:



Dale Ho

(S.D.N.Y.)

A civil rights litigator nationally recognized for his work on voting rights became one of just two AAPI men serving on the bench in the Southern District of New York.



Nusrat Choudhury

(E.D.N.Y.)

A distinguished civil rights and civil liberties attorney became the first Muslim woman and the first Bangladeshi American to serve as a federal judge.



Nancy Abudu

(11th Cir., Ga.)

An accomplished civil rights litigator who has worked in or done work affecting every state in the Eleventh Circuit became the first Black woman to serve on the Eleventh Circuit and the first person of color from Georgia to serve on this court.



Julie Rikelman

(1st Cir., Mass.)

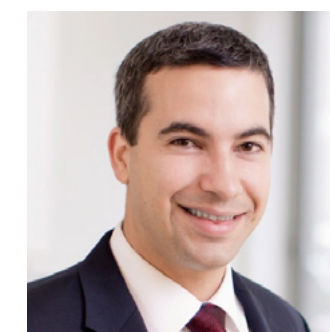
A veteran civil rights advocate known for her work on reproductive justice in state and federal courts nationwide became the first immigrant woman and the first Jewish woman to serve on the U.S. Court of Appeals for the First Circuit.



Rachel Bloomekatz

(6th Cir., Ohio)

One of the nation's leading public interest advocates and appellate litigators became a much-needed balancing force on the conservative Sixth Circuit.



Bradley Garcia

(D.C. Cir.)

An attorney with significant experience in public and private litigation and a noteworthy pro bono record became the first Latino to sit on the D.C. Circuit and the youngest circuit court nominee confirmed under President Joe Biden.

Introduction:

2023 was a telling year at the United States Supreme Court.

Public approval of the Court remained at a record low following revelations surrounding the far-right justices' unethical acts and practices despite a historic public relations ploy — the creation and publication of a so-called “Code of Conduct for Justices” — thanks to the work of advocates like Alliance for Justice, its partners, and its 150-plus member organizations, all working to ensure that the Court is held accountable for its misdeeds.

A phenomenal 69 judges were confirmed to lifetime federal positions in 2023 — including many critical firsts — and we move into 2024 with a renewed sense of power and purpose.

2023 was also a banner year for securing historic judicial nominations and confirmations. It is Alliance for Justice's mission to support the confirmation of diverse, highly qualified, and fair-minded judges to the federal bench, and this year we did just that. A phenomenal 69 judges were confirmed to lifetime federal positions in 2023 — including many critical firsts — and we move into 2024 with a renewed sense of power and purpose. In one of his regular opinion pieces for Democracy Docket, AFJ President Rakim H.D. Brooks [pointed out that](#) more than a quarter of federal districts — 25 out of 94 — had still never had a non-white judge. We at AFJ believe the time has long since come for that to change — and were proud to see the Biden Administration nominate two highly qualified candidates of color to two of those benches in January 2024.

Along with demographic diversity, we also pushed for and were rewarded with a sustained emphasis on professional diversity, with judges from labor law, reproductive rights, and civil rights backgrounds confirmed to the bench. Importantly, the vast majority of confirmed judges have been women and people of color — meaning that our federal courts are coming closer to resembling the communities they serve. Just look to Judge Sara Hill, the first Native American woman confirmed to the U.S. District Court for the Northern District of Oklahoma and Judge Shanlyn Park, newly confirmed to the U.S. District Court for the District of Hawaii and the only native Hawaiian woman to sit on the federal bench.

These judges testify to the Biden Administration's focus on building an exceptional judiciary that does not sacrifice either professional or demographic diversity.

This year, we also saw the Supreme Court enact its first ever [“Code of Conduct for Justices.”](#) Rather than adopt the detailed, tried-and-true code followed by every lower federal court judge, the Court opted, 233 years into its existence, to legally freestyle a narrowly applicable code that is more notable for its loopholes and carveouts than its tenets. Alliance for Justice played a key role in putting the Court on notice. It was AFJ that authored a letter calling for Justice Thomas to resign and secured the support of nearly [70 organizations across the country](#), few of which had ever joined such a call. We will continue to zealously advocate for a meaningful, enforceable code of ethics.

Alliance for Justice, with its many arms and allies, has advanced advocacy and offered sustained, significant support to those who stand alongside us. Over the last calendar year, we published 29 reports on Biden nominees, sent 21 letters of support for judicial nominees to the Senate Judiciary Committee, and hosted seven Holding Court events, at which AFJ fosters dialogue that makes the law, the courts, and judicial developments more accessible. More than 6,000 people tuned in to our events, witnessing speakers such as Representative Jamie Raskin and court watchers Dahlia Lithwick and Elie Mystal provide nuanced — and entertaining — insight into our federal court system. Our annual Tip the Scales gala featured former Texas state senator and reproductive rights champion Wendy Davis, awarded the inaugural Robert Pennoyer Champion of Justice Award,

as well as leaders from Gender Justice and Earthjustice, who received Ally for Justice Awards.

Our courts are more diverse than ever and AFJ, AFJ Action, and our incredible member organizations have led the charge that prodded this historically corrupt Supreme Court into acknowledging the need to respond to scrutiny. Through innovative actions and staff growth, we have proven our commitment to our mission is stronger than ever. We look forward to nurturing and growing this incredible momentum in 2024 with the help of funders, donors, partners, and members. From filling all the remaining federal judicial vacancies to advocating for professional diversity to seeing an end to [this nation's all-white benches](#), there is much work to be done, and AFJ will, as ever, be at the forefront of those efforts.



Nomination Statistics:

In 2023, the Biden administration nominated 59 attorneys to the federal bench, bringing the total over their first three years in office to 198 federal judicial nominations. This includes one Supreme Court nominee, 43 circuit court nominees, 152 district court nominees and two Court of International Trade nominees. In 2023 alone, the administration nominated 7 circuit court nominees, 50 district court nominees, and two Court of International Trade nominees.

Total Biden Nominations 2021-2023

	2021	2022	2023	Total
District	54	48	50	152
Circuit	16	20	7	43
International Trade	0	0	2	2
Supreme Court	0	1	0	1
	=	=	=	=
Total	70	69	59	198



Race and Ethnicity

Out of the 59 nominees announced by the Biden administration in 2023, 24 are people of color, making up about 40% of all nominations last year. Of those, 12 judicial nominees identify as Black, six as Asian American or Pacific Islander, five as Latino, and one as Native American.

Racial and Ethnic Diversity 2021-2023

	2021	2022	2023	Total
Black	20	21	12	53
AAPI	13	11	6	30
Latino	14	13	5	32
Native American	3	0	1	4

Gender

Twenty-five, or 42%, of the Biden administration's 59 nominations in 2023 were women. Of those 25 nominees, five are Black, five are Asian American or Pacific Islander, and four are Latina. Additionally, one nominee is a Native American woman, three women identify as LGBTQ+, and one lives with a disability.

Gender Diversity 2021-2023

	2021	2022	2023	Total
Total Women	53	41	25	119
Black Women	15	14	5	34
AAPI Women	10	7	5	22
Latina Women	6	10	4	20
Native American Women	3	0	1	4
LGBTQ+ Women	4	2	3	9
Women With Disabilities	0	1	1	2

Profession

In 2023, the Biden Administration nominated seven public defenders, six civil rights lawyers, three economic justice lawyers, and seven plaintiff's lawyers to the federal bench.

Professional Diversity 2021-2023

	2021	2022	2023	Total
Public Defenders	20	11	7	38
Civil Rights Lawyers	14	12	6	32
Economic Justice Lawyers	1	3	3	7
Plaintiff's Lawyers	9	4	7	20

Confirmation Statistics:

In 2023, the United States Senate confirmed 69 judges nominated by the Biden administration.

This brings the overall number of judges confirmed under the Biden administration up to 166, from 97 at the end of 2022. Justice Ketanji Brown Jackson can now count a total of 39 circuit court judges and 126 district court judges as fellow Biden appointees.

Total Biden Confirmations 2021-2023	2021	2022	2023	Total
	40	57	69	166



Race and Ethnicity

Forty-five of the 69 judges confirmed to the federal bench in 2023 are people of color, about 65% of all confirmed judges last year. Of those 45, 21 are Black, 11 are Asian American or Pacific Islander, 12 are Latino, and one is Native American.

Racial and Ethnic Diversity 2021-2023

	2021	2022	2023	Total
Black	12	19	21	52
AAPI	10	7	11	28
Latino	7	12	12	31
Native American	2	1	1	4

Gender

Overall, 35, or 50%, of the Biden administration's 69 nominees confirmed to the federal bench in 2023 are women. Of those 35, nine are Black, seven are Asian American or Pacific Islander, seven are Latino, and one is Native American. Additionally, two women confirmed to the bench identify as LGBTQ+, and one as having a disability.

Gender Diversity 2021-2023

	2021	2022	2023	Total
Total Women	32	41	35	108
Black Women	10	13	9	32
AAPI Women	9	4	7	20
Latina Women	3	8	7	18
Native American Women	2	1	1	4
LGBTQ+ Women	1	3	2	6
Women With Disabilities	0	0	1	1

Profession

In addition to those significant diverse demographic confirmations, 2023 saw the ascension of eight public defenders, 13 civil rights lawyers, two economic justice lawyers, and seven plaintiff's lawyers to the federal bench.

Professional Diversity 2021-2023

	2021	2022	2023	Total
Public Defenders	19	7	8	34
Civil Rights Lawyers	7	5	13	25
Economic Justice Lawyers	1	1	2	4
Plaintiff's Lawyers	7	3	7	17

Historic Confirmations:

To date, President Biden has nominated the most diverse set of judicial candidates in history.

This month marks three years since President Biden took office, pledging to support diversity on the nation's highest court by nominating and confirming a Black woman as a Supreme Court justice. When Justice Ketanji Brown Jackson became the first Black woman sworn in to serve on the U.S. Supreme Court on June 30, 2022, he made good on that first, high-profile pledge. Over the past three years, his commitment to diversity and the manifestation of that commitment in judicial nominations has remained consistent. Although Justice Jackson's historic confirmation represents the most obvious manifestation of structural change in the judiciary, the highest testament today to the President's commitment lies in the administration's persistence in filling vacancies across the country, including in states whose senators have traditionally obstructed rather than facilitated progress in the justice system.

The diversity — not just along lines of race, gender, and sexual orientation but also professional background — of Biden's judicial appointees surpasses those of any previous U.S. president. To date, President Biden has nominated the most diverse set of judicial candidates in history, including, to name just a few, the first Muslim woman to serve as a federal judge; the first Black woman to serve on the Eleventh Circuit (which includes [some of the Blackest states](#), by proportion of the population, in the country); and the first Latino person to sit on the D.C. Circuit.

By reinforcing positive outcomes achieved in President Biden's initial two years in office, we laid the groundwork for further efforts transforming the federal courts to the benefit of our democracy. This is why taking the time to celebrate the joint efforts of AFJ, the Biden administration, the Senate, our coalition, and our allies through 2023 — and the results we have achieved — is critical. We must continue encouraging those who have stood and fought beside us for accountability, ethics reform, and diversity on our courts, including an ever-growing contingent of movement lawyers. Our goal is in reach, and our highest aspirations are becoming norms as our courts undergo the transition from predominantly white and male, with legal careers primarily based in corporate law or, if in public service, prosecution, to a bench reflective of America and the legal profession.

Many judges nominated in 2022 patiently awaited confirmation for months on end. On average, it normally takes between six to eight months for a judge to be confirmed after being nominated; however, several nominees, including notably Dale Ho, Tiffany Cartwright, and Natasha Merle, waited far past that threshold for as long as one year or more. Thirteen judges who waited far longer than average for confirmation were finally [confirmed in 2023](#).



Several judges nominated and confirmed by the Biden administration have achieved significant milestones within their respective jurisdictions. Noteworthy confirmations include:

Dale Ho:

(United States District Court for the Southern District of New York)



Nominated on September 20, 2021, Judge Dale Ho's confirmation to the United States District Court for the Southern District of New York was a seminal moment for advocates for the appointment of civil rights lawyers to the federal bench. His June 14, 2023, confirmation made Judge Ho one of just two AAPI men sitting on SDNY, one of the most populous and diverse federal jurisdictions in the United States. His acquaintance with SDNY began when he clerked for Judge Barbara Jones after law school on the court where he now sits. A second, two-year clerkship followed for Associate Judge Robert Smith of the New York Court of Appeals, that state's highest court. While he began his career as a litigator at a firm, Dale Ho then joined the NAACP Legal Defense Fund, serving first as a fellow and then as Assistant Counsel, focusing on legislative redistricting. From 2013 onward, Dale Ho led the ACLU's Voting Rights Project, continuing to challenge gerrymandering and voter suppression laws, among other measures. Having litigated at every level of the federal system to uphold and strengthen civil rights and legal protections, Dale Ho's long-awaited confirmation sets critical precedent for the caliber of nominee and movement lawyer it is possible to confirm.

Nusrat Choudhury:

(United States District Court for the Eastern District of New York)



Nusrat Choudhury was nominated to the United States District Court for the Eastern District of New York on January 19, 2022. A dedicated — and decorated — civil rights and civil liberties attorney, now-Judge Choudhury spent her career advocating for equal justice under the law. She previously worked for the ACLU's Racial Justice Program, challenging unlawful stop-and-frisk practices, racial profiling, and other tactics and policies used by law enforcement that disproportionately harm people of color. In 2020, the ACLU of Illinois drew Judge Choudhury away to take on the role of Legal Director. Her team's primary areas of focus included policing, legal system reform, and improving the conditions to which incarcerated people are subjected. On June 15, 2023, the Senate confirmed Nusrat Choudhury to the United States District Court for the Eastern District of New York and she became the first Muslim woman and the first Bangladeshi American to serve as a federal judge.

Nancy Abudu:

(United States Court of Appeals for the Eleventh Circuit)



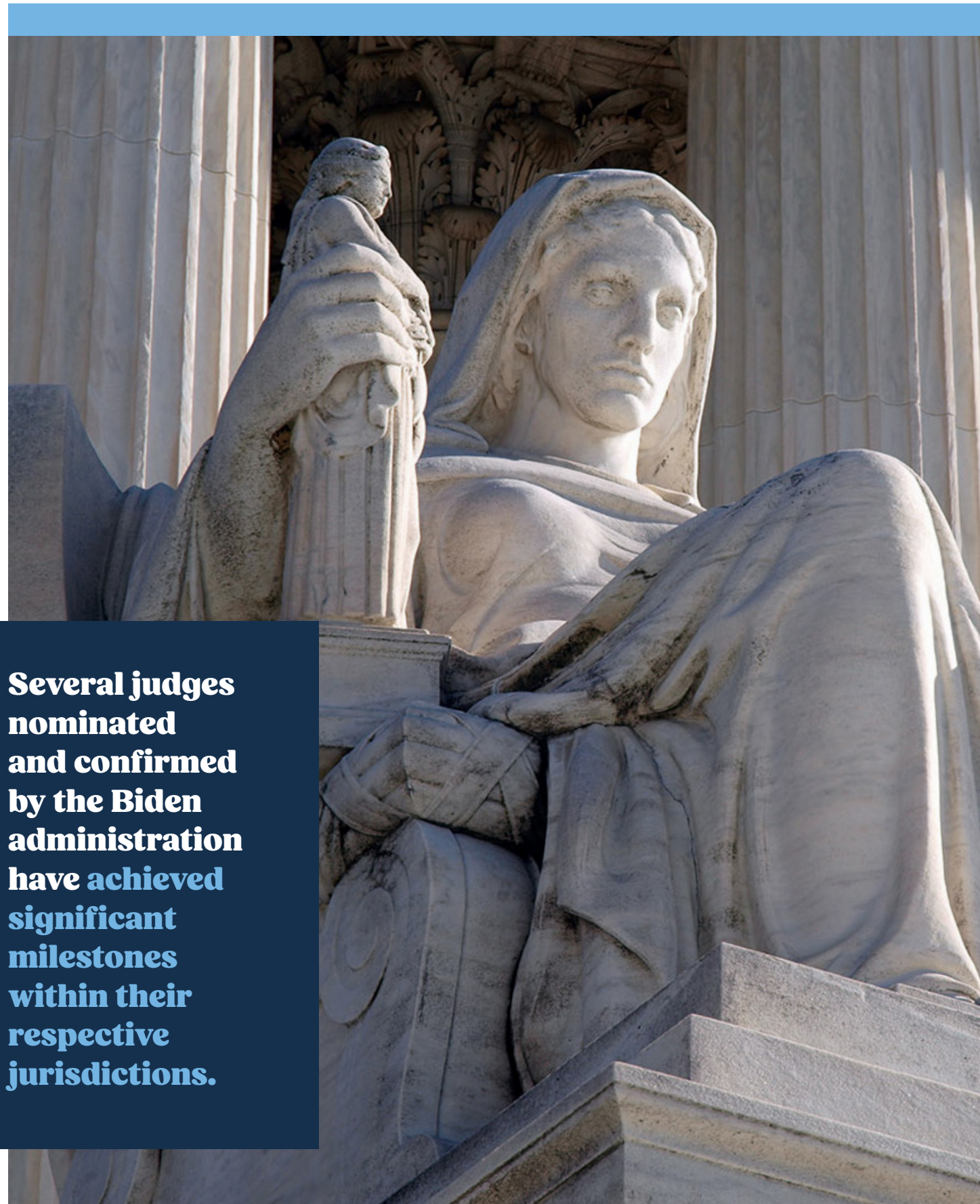
Nancy Gbana Abudu was nominated to the United States Court of Appeals for the Eleventh Circuit on January 10, 2022. Judge Abudu, a prominent appellate civil rights attorney, has a litigation record that is remarkable for not just the importance of her accomplishments but also her consistency in dedicating her career to safeguarding American democracy and upholding the constitutional rights of all Americans, irrespective of their race, religion, or political beliefs. Born in Alexandria, Virginia, to parents who immigrated from Ghana, Judge Abudu dedicated her career to protecting the fundamental right to vote and advocating for those who have been historically excluded from the electoral process, regardless of their political affiliation. Upon her confirmation on May 18, 2023, she became the first Black woman to serve on the Eleventh Circuit and the first person of color from Georgia to serve on that court.

Julie Rikelman:

(United States Court of Appeals for the First Circuit)



Julie Rikelman was nominated to the United States Court of Appeals for the First Circuit on August 1, 2022. Judge Rikelman was born in Kiev, Ukraine, in 1972 and spent her early childhood there. When she was six years old, her family immigrated to the United States, fleeing antisemitism in the former Soviet Union. They settled in Brookline, Massachusetts in 1979, where she learned English as a second language. After law school, Julie Rikelman clerked twice, first for the late Judge Morton Greenberg of the U.S. Court of Appeals for the Third Circuit and then for Justice Dana Fabe of the Alaska Supreme Court. Notably, Julie Rikelman worked for the Center for Reproductive Rights as a senior staff attorney and was soon after promoted to U.S. Litigation Director. In this role, she litigated high profile reproductive rights cases, including *Dobbs v. Jackson Women's Health*, on behalf of health care providers, Whole Women's Health, and Planned Parenthood South Texas Surgical Center. Julie Rikelman was confirmed to the United States Court of Appeals for the First Circuit on June 20, 2023, becoming the first immigrant woman and the first Jewish woman to serve on the U.S. Court of Appeals for the First Circuit.



Several judges nominated and confirmed by the Biden administration have achieved significant milestones within their respective jurisdictions.

Rachel Bloomekatz:

(United States Court of Appeals for the Sixth Circuit)



Rachel S. Bloomekatz was nominated to the United States Court of Appeals for the Sixth Circuit on May 25, 2022. Following law school, she clerked for three judges: Judge Guido Calabresi of the U.S. Court of Appeals for the Second Circuit, Chief Justice Margaret Marshall of the Massachusetts Supreme Judicial Court, and former Associate Justice Stephen Breyer of the U.S. Supreme Court. After clerking, Judge Bloomekatz served as an associate within some of the top private appellate practices in the United States, briefing and arguing high-profile appeals in state and federal courts. Even while in private practice, she maintained a robust pro bono caseload, serving as legal counsel for impoverished women and children seeking asylum in the United States. Rachel Bloomekatz was confirmed to United States Court of Appeals for the Sixth Circuit on July 18, 2023.

Bradley García:

(United States Court of Appeals for the District of Columbia Circuit)



Bradley N. García was nominated to the United States Court of Appeals for the D.C. Circuit on June 15, 2022. Judge García consistently upheld a strong pro bono practice while in the private sector, with an emphasis on safeguarding the rights of defendants and people who have been incarcerated. Upon his confirmation on May 15, 2023, Bradley García became the first Latino to serve on the D.C. Circuit Court of Appeals. His confirmation was a significant landmark for Latinx representation on one of the nation's most powerful appellate benches, as Latinx people are historically underrepresented on the federal bench.

Pivotal Outcomes:

When fair-minded nominees are confirmed, fair-minded opinions result.

Since their confirmations, these judges across the nation have steadfastly enforced the rule of law, realizing the highest ideals of the justice system and its responsibility to ensure equality of rights and opportunities to all people within the United States.



The following four cases emphasize the impact that good jurists can have on our legal system:

We the Patriots Inc. v. Grisham,

1:23-cv-00773-DHU-LF (D.N.M. Sep. 29, 2023)

Judge David Urías was nominated to the District Court for the District of New Mexico on September 8, 2021. Prior to serving on the bench, Judge Urías worked in private practice at Freedman Boyd Hollander Goldberg Urías & Ward P.A. and for the Mexican American Legal Defense and Educational Fund.

In 2023, New Mexico Governor Michelle Lujan Grisham responded to escalating rates of gun violence by declaring a public health emergency. The New Mexico Department of Health subsequently issued an order that barred individuals in high crime areas from carrying guns in state parks and public playgrounds. We the Patriots, a pro-gun group, filed suit against the Department of Health, requesting an injunction to prevent the ban from going into effect. Judge Urías denied their request. Even under current, vastly distorted Second Amendment jurisprudence, states can prohibit the carrying of firearms in sensitive places. Judge Urías held that, under Supreme Court precedent,

public parks and playgrounds may be sensitive places, and thus We the Patriots could not succeed in their request for a preliminary injunction.

Since the Court’s decision in 2008’s *District of Columbia v. Heller*, a triumph by gun-rights activists over the true meaning of the Second Amendment that was decades — and millions of dollars — in the making, conservative activists have continued fighting to expand the Second Amendment and limit gun-control laws even further. Fair-minded jurists like Judge Urías keep our communities safe, issuing rulings that protect Americans who want and deserve to visit public parks and playgrounds without fearing for their lives.

This New Mexico case is also notable given the Supreme Court this Term heard *United States v. Rahimi*, which concerns whether the federal government can ban people with domestic violence protective orders against them from possessing guns. *Rahimi* presents the Court with the

chance to clarify and cabin its troubling 2022 opinion in *Bruen*, which established a new, even more conservative standard for evaluating gun regulations. Although it left its scope uncertain, *Bruen* directed courts to look to the nation’s history and tradition when considering the constitutionality of gun laws. Lower federal courts have struggled to apply this standard. The Supreme Court will not decide *Rahimi* for months yet. In the meantime, judges like Judge Urías who are willing to tackle the confusing *Bruen* standard to reach logical constitutional holdings are critical — and their voices may even influence the Supreme Court’s decision-making in *Rahimi*.

Northwestern Band of the Shoshone Nation v. Wooten,

No. 22-35140 (9th Cir. Oct. 2023)

Judge Jennifer Sung was nominated by President Biden to the Ninth Circuit on June 30, 2021. Prior to serving on the bench, she worked in labor law, representing workers and unions. Judge Sung was the first Asian-American woman to be nominated to the Ninth Circuit from Oregon and the third AAPI woman to serve on a federal appellate court.

Wooten concerns the 1868 Treaty of Fort Bridger between the state of Idaho and the Shoshone and Bannock Tribes. The treaty specified that the tribes would cede their land to the United States in exchange for certain reserved rights, including the right to hunt on unoccupied U.S. lands. Idaho later claimed that these reserved rights could only be exercised by tribe members living on reservations. The Shoshone filed suit, arguing that the state incorrectly interpreted the treaty. Judge Sung agreed with the tribe, finding that the treaty secured hunting rights for all tribal members, not just those living on reservations.

Judge Sung's ruling in this case is vital because of the long and troubling history of states disregarding treaty obligations. Too many Native Americans and tribes across the United States live with the ongoing consequences of this nation's broken promises. Judge Sung's ruling mandates that Idaho honors its promise to the Shoshone.

Grace v. Board of Trustees,

(No. 22-1742 (1st Cir. 2023))

Judge Gustavo Gelpí was nominated to the United States Court of Appeals for the First Circuit on May 12, 2021. Before joining the court, he served as Chief Judge of the U.S. District Court for the District of Puerto Rico. Judge Gelpí has extensive litigation experience and spent four years representing indigent clients as an assistant federal public defender. He is only the second judge from Puerto Rico to serve on the First Circuit.

In *Grace*, the mother of a bullied child ("MG") sued her son's school under Title IX, arguing that the school showed deliberate indifference to her son's harassment. From fourth through sixth grade, MG was bullied by his classmates because they believed him to be gay or transgender. Grace, the mother, argued that the school did not take adequate steps to prevent this harassment, citing several egregious bullying incidents involving not only MG's classmates but also school faculty. On one occasion, an adult bus monitor told MG to "watch his flamboyant hands" instead of intervening to stop the bullying. The lower court ruled in the school's favor, but on appeal, Judge Gelpí ruled for a unanimous First Circuit panel that Grace could proceed with her Title IX claim.

Given the prevalence of anti-LGBTQ+ views in the United States at this moment and the politicization of what should be basic civil rights for members of the LGBTQ+ community, it is critical that those facing discrimination and harassment have their day in court. Judge Gelpí's ruling allows MG and his mother to seek justice. Notably, during his time as a district court judge in Puerto Rico, Judge Gelpí was instrumental in [overturning an unconstitutional ban](#) on same-sex marriage in the territory. This judge's commitment to protecting individuals against discrimination is laudable and testifies to his belief in the principle of equal justice under law.

United States v. Williams,

No. 22-10052 (9th Cir. 2023)

Judge Lucy Koh was nominated to the Ninth Circuit by President Biden on September 20, 2021. Prior to joining the court, she served as a district court judge on the Northern District of California and as a California Superior Court judge. Judge Koh was the first Korean-American woman confirmed to a federal appellate court.

Judge Roopali Desai was nominated by President Biden to the Ninth Circuit on June 15, 2022. Judge Desai served as a litigator for most of her career, specializing in voting rights and constitutional law issues. She was the first South Asian person confirmed to the Ninth Circuit.

In 2019, San Francisco police officers pulled over Willie Williams for driving with faulty brake lights. After making the initial stop, the officers asked Williams if he consented to a vehicle search and whether there was marijuana in his vehicle. Williams did not consent to the search but stated that he had marijuana. Ignoring Williams, police searched his car, finding pills and a handgun. Pre-trial, Williams's attorney moved to exclude the evidence from the search, arguing that the search and seizure violated the Fourth Amendment. Judges Koh and Desai agreed, finding that the police violated Williams's Fourth Amendment rights by extending the stop. The case was remanded to the district court to evaluate whether there was an independent reasonable basis for searching Williams's car.

The precedent set by *Williams* is significant because it holds that pretext stops can violate the Fourth Amendment. Such stops occur when police officers use unrelated traffic infractions as a pretext for searching a vehicle to look for evidence of other crimes. The victims of pretext stops are predominantly people of color, including those whose immigration status or prior interactions with law enforcement make them especially vulnerable to this abuse of power by law enforcement.



Supreme Court Ethics:

Unsurprisingly, following the *Hobby Lobby* and *Dobbs* leaks, the expansion of the “shadow docket” to advance political ambitions, and the creation of the “major questions” doctrine to ensure no issue before a federal court escapes the uber-activist Supreme Court, 2023 saw further degradations of the Court by the officials charged with ensuring its integrity.



Since last spring, new ethics revelations have rocked the bench on a monthly basis — sometimes more frequently — damaging not only the Court’s image but public trust in the Court’s legitimacy. A profoundly troubling series of revelations about the justices, their spouses, and the unethical and even illegal behaviors that now appear endemic to the Roberts Court finally prompted the Court to establish a “Code of Conduct for Justices” — just in time for the Senate Judiciary Committee to issue the subpoenas the justices knew were coming. These subpoenas targeted far-right billionaire, Nazi memorabilia collector, yacht-and-jet owner, and mega-donor to the Republican Party Harlan Crow and far-right financial and ideological impresario Leonard Leo, calling on them to testify before the committee to the nature of the influence they purchased from their beneficiaries on the Court.

A few commentators hastily hailed the code as a watershed document, but legal analysts and court watchers were nearly unanimous in their condemnation of the code as political theater. The code not only lacks a mechanism of enforcement but it is also riddled with conspicuous exceptions, exempting justices from recusal under a vague and unique “rule of necessity” and creating a loophole for justices’ spouses to continue earning income from attorneys whose firms regularly appear before the Court. The code is more a declaration of exceptionalism than a binding code of conduct.

What is worthy of note is that the Supreme Court, under the control of a six-justice conservative majority, felt the need to issue a code of conduct at all. By putting their names to this singular document at this moment in time — with the Court under the control of this calculating, terrifying, and merciless majority — these justices are admitting their complicity. The Court’s response to public scrutiny, a Senate investigation, and advocates’ calls for accountability is an enormous success for fair courts advocates. Just months ago, the prospect of a Supreme Court code of conduct was unfathomable.

The following subsections constitute a non-exhaustive list of 2023’s Supreme Court ethics scandals. It offers a useful overview of the controversies that finally led the Court to adopt their flawed “Code of Conduct for Justices.”

What is worthy of note is that the Supreme Court, under the control of a six-justice conservative majority, felt the need to issue a code of conduct at all.

Justice Clarence Thomas:

From private jet trips to boarding school tuition to real estate, Justice Thomas has accepted a truly stunning and yet-to-be-fully-exposed set of perks regularly, and over decades, from private, politically motivated benefactors.

Reporting by ProPublica, the Washington Post, and the New York Times, exposed that Justice Thomas repeatedly engaged in unethical and illegal conduct.

Reporting by ProPublica, the Washington Post, and the New York Times exposed that Justice Thomas repeatedly engaged in unethical and illegal conduct, to which his strongest semblances of a defense have been ignorance or subjectivity. For this reason, AFJ and allies, including **66 other organizations**, have taken the very serious and, for many, unprecedented step of repeatedly calling for **Thomas's resignation**. Our justice system can only function if those we trust to enforce the law know and follow the law.

The Alliance for Justice and AFJ Action Campaign followed President Brooks's call for resignation by **launching a \$400,000 advertising campaign** — the #ThomasResign campaign — featuring **video ads** and banners that appeared online in major national outlets, including The New York Times, The Washington Post, CNN, Politico, Fox, and The Hill. The campaign delivered more than 9 million impressions and 740,000 video completions, driving an overall video completion rate (VCR) of 72.5%.

To kick off the October SCOTUS term, AFJ ran another buy on The Washington Post from October 1-8. The campaign included **this 30 second video** and several banner ads. Overall, we garnered nearly 3.6 million impressions, which was almost triple the number of estimated impressions.

Our campaign continues, with next steps including urging every member of Congress to demand the immediate resignation of Justice Thomas and creating a lasting ethics framework with a mechanism of enforcement that can be applied to all justices. AFJ will continue to support and urge congressional leadership to proceed with hearings, subpoenas of the influential figures overtly buying influence at the Court, and other investigative measures to expose corruption.

Harlan Crow:

In April, ProPublica released a **bombshell** report finding that Justice Thomas repeatedly accepted lavish gifts from billionaire Harlan Crow. **These "gifts" included a \$500,000 nine-day trip to Indonesia involving both a private jet and a private yacht; a visit to Bohemian Grove, the ultra-private, all-male retreat in Sonoma, California; and yearly visits to Crow's expansive compound in upstate New York.**

Though **Crow repeatedly claimed** that these gifts were mere "hospitality" and "no different from the hospitality we have extended to our many other dear friends," his friendship with Justice Thomas followed Thomas's confirmation and ascension to the nation's highest court — a court that has **repeatedly ruled on** issues that directly and deeply affect Harlan Crow — and Thomas's **threat to leave the court in 2000 over his salary**, though it was \$173,600, equivalent to \$300,000 today.

Moreover, Crow's gifts go far beyond typical tokens of friendship — even for a billionaire. Crow **purchased three properties** from the Thomas family, including Justice Thomas's mother's house. Post-purchase, Crow **poured money into renovating the home**, adding carpeting, a new fence, and new gates. The inhabitant? Ms. Leola Williams, Thomas's mother, who no doubt enjoyed her billionaire-funded home renovation. When questioned about this real estate "deal," Crow said, "My intention is to one day create a public museum at the Thomas home dedicated to telling the story of our nation's second Black Supreme Court justice." Regardless of Crow's intentions, Justice Thomas is bound by law, the Ethics in Government Act, and has clearly and repeatedly **violated that law** by refusing to disclose Crow's diverse and eye-wateringly expensive gifts. For context: Justices are **required to disclose** real estate dealings over \$1,000 and **Crow paid \$133,363** for these properties.

Viewed in their totality, Crow's "gifts" are obviously not the features of a friendship but successful efforts to buy access. And a justice system where access is based on money is not a just system at all.

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The Koch Brothers:

Crow is not Justice Thomas's only billionaire "friend."

Thomas has a cadre of wealthy pals, including the Koch Brothers. The Kochs are ultra-wealthy libertarians who wield immense political power in the United States. They befriended Justice Thomas when he stayed in a camp with the Kochs and Harlan Crow. Justice Thomas went on to attend and even speak at donor events for the Kochs.

Thomas's actions abetting the Kochs are particularly egregious given that the Koch brothers regularly sponsor or are significantly affected by cases before the Court.

While justices often speak at events, such events are typically public. By contrast, Justice Thomas spoke at private donor events for the ultra-wealthy, his presence inarguably used to benefit the Kochs' network. Thomas's actions abetting the Kochs are particularly egregious given that the Koch brothers regularly sponsor or are significantly affected by cases before the Court.

Among the many petitions and cases before the Court that have significant implications for the Kochs and their ilk is a case the Supreme Court heard in January, *Loper Bright*. Discussed here and below, the case is the product of years of conservative advocacy. In sum, *Loper Bright* could render it virtually impossible for administrative agencies to function effectively and open the floodgates for corporate interference in government affairs. The case challenges a fundamental administrative law principle established in 1984: the *Chevron* doctrine. The doctrine holds simply that when a statute affecting an agency is ambiguous, courts must defer to that agency's interpretation. The logic of *Chevron* is that agencies, staffed with experts, are better suited than judges to decide complex, highly specialized issues.

Justice Thomas upheld the *Chevron* doctrine in *Brand X*, a landmark administrative law case from 2005. After *Brand X*, however, Justice Thomas turned on the doctrine, ultimately denouncing his own opinion in 2020:

“Although I authored *Brand X*, “it is never too late to ‘surrende[r] former views to a better considered position.’” *Brand X* appears to be inconsistent with the Constitution, the Administrative Procedure Act (APA), and traditional tools of statutory interpretation...*Chevron* is in serious tension with the Constitution, the [APA, and over 100 years of judicial decisions.]”

Thomas's full 180 on foundational Supreme Court precedent might strike an observer as surprising — were his extra-judicial affiliations and activities not known.

Thomas's full 180 on foundational Supreme Court precedent might strike an observer as surprising — were his extra-judicial affiliations and activities not known. Occam's Razor dictates that the simplest explanation is the most likely. To that end, there is no evidence of a stronger or more compelling rationale for Thomas's about-face than the increasingly large role that Thomas granted mega-wealthy conservative activists in his personal life in the intervening years and the boon that his new position would represent to the interests of these "friends" if adopted by the full Court.

The Horatio Alger Association of Distinguished Americans:

Given Justice Thomas’s plethora of billionaire friends, it is fair to ask: Where does he meet these ultra-wealthy individuals? In addition to his Bohemian Grove forays and participation in elite Koch gatherings, Thomas has also become deeply involved with the Horatio Alger Association of Distinguished Americans, a membership group comprised largely of affluent conservatives.

According to the New York Times: “[Justice Thomas’s] friendships forged through Horatio Alger have brought him proximity to a lifestyle of unimaginable material privilege. Over the years, his Horatio Alger friends have welcomed him at their vacation retreats, arranged V.I.P. access to sporting events and invited him to lavish parties.... Several Horatio Alger friends also helped finance the marketing of a hagiographic documentary about the justice in the wake of an HBO film that had resurfaced Anita Hill’s sexual harassment allegations against him during his confirmation.”

Among Thomas’s closest Horatio Alger friends are David Sokol, a millionaire with ties to Berkshire Hathaway, and Wayne Huizenga, the billionaire founder of Blockbuster video. Sokol and his wife have arranged [several lavish getaways](#) for Justice Thomas, including vacations at their Montana ranch and their Florida mansion. Huizenga, now deceased, underwrote a library wing at the Savannah College of Art and Design honoring Justice Thomas. These friendships testify to the influence Justice Thomas affords the ultrawealthy. The tangible benefits of these relationships do not flow only one way: Every year, the Horatio Alger Association conducts its ceremony inducting new lifetime members in the Supreme Court’s courtroom, courtesy of Justice Thomas. An attendee [described the experience as](#) “the closest thing to being knighted in the United States.” Knightings at the Court are obviously a far cry from the founding fathers’ vision for the judiciary.

But Justice Thomas’s scandals do not end there; his wife, Ginni Thomas, has also been at the center of numerous, ongoing controversies.

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Ginni Thomas:

Ginni Thomas is a conservative activist who wields significant power in Washington. Her connections to far-right power brokers, both in and out of government, raise questions about her husband’s rulings. In 2012, Leonard Leo, founder of the Federalist Society and architect of the conservative takeover of the federal judiciary, instructed Kellyanne Conway to [pay Ginni Thomas \\$25,000](#) for “consulting work” but to make “no mention of Ginni, of course.” Later that year, Conway’s nonprofit [filed an amicus brief](#) in *Shelby County v. Holder*, the landmark case that gutted key provisions of the Voting Rights Act. Justice Thomas, of course, voted in line with Conway’s group’s attack on the VRA.

In 2023, the Washington Post revealed that this was far from the first time that Thomas’s Republican “friends” have bankrolled his wife’s activism. Crow donated a staggering [\\$500,000](#) to Ginni Thomas’s Tea Party-affiliated organization [Liberty Central](#), founded after she stepped down from another conservative political project, Liberty Consulting. Wealthy as he is, it strains credulity to imagine Crow does so much for all his “dear friends.” The flow of money from conservative activists who benefit from Thomas’s Court politics to Ginni Thomas is yet one more reason to doubt her husband’s impartiality.

In early December, the Supreme Court [agreed to hear a case](#) that is the most obvious instance yet of a case from which Justice Thomas should recuse himself on the basis of Ginni Thomas’s actions. The United States Court of Appeals for the District of Columbia [ruled on April 7, 2023](#), that the federal government could prosecute January 6 rioters under a law criminalizing the obstruction of official proceedings. The event in question: Congress’s certification of the results of the 2020 election, which former President Donald Trump lost but refused to concede. Ginni Thomas famously texted then-White House Chief of Staff Mark Meadows, urging him to back Trump’s efforts to thwart the election’s outcome and refuse to leave power — and [stood by those tweets through 2022](#). Now, the Supreme Court will weigh in on how those who sought to obstruct the election’s certification can be prosecuted. Should it rule that the law cannot be used in relation to January 6 defendants, President Trump, too, may then dodge prosecution for obstruction.

Though Justice Thomas has featured most prominently in exposés of the Court’s recent scandals, he is far from the only justice guilty of ethical transgressions. Justice Alito has also been implicated in several controversies.

Ginni Thomas is a conservative activist who wields significant power in Washington. Her connections to far-right power brokers, both in and out of government, raise questions about her husband’s rulings.

Justice Samuel Alito:

Justice Sam Alito has also benefited from a close “friendship” with a conservative billionaire.

Alito’s pal, hedge fund magnate Paul Singer, paid for Alito to go on a luxurious private fishing trip to Alaska, complete with a private jet flight costing \$100,000. Alito did not disclose this trip in his 2008 financial disclosures, nor did he recuse himself from any of the 10 Supreme Court cases involving Singer’s hedge fund. In fact, in one 2014 case, the Supreme Court’s ruling led to the hedge fund receiving \$2.4 billion in damages. And this is not the first time that Justice Alito has failed to recuse himself.

This Term, Alito refused to recuse from *Moore v. United States*.

This Term, Alito refused to recuse from *Moore v. United States*, a landmark tax law case that could significantly curtail Congress’s power to levy taxes. One *Moore* attorney, David Rivkin, has interviewed the Justice repeatedly, generating complimentary pieces for the Wall Street Journal, Alito’s chosen, paywalled forum for responding to revelations of his misdeeds. One of Rivkin’s articles even lionized Justice Alito as the “Court’s plain-spoken defender.” In August, Democrats on the Senate Judiciary Committee contacted Chief Justice Roberts to request Alito’s recusal. Characteristically, Justice Alito responded with an impassioned statement refusing to recuse himself and denying his responsibility to do so.

It was Rivkin who conducted the viral interview in which Justice Alito stated, “I know this is a controversial view, but I’m willing to say it. No provision in the Constitution gives [Congress] the authority to regulate the Supreme Court — period.” With that remark, Justice Alito betrayed that he considers himself immune from accountability. He is not alone in this view. Chief Justice John Roberts has also demonstrated an active lack of respect for Congress in particular.

Chief Justice John Roberts:

John Roberts denies that the Supreme Court is accountable for justices’ ethical lapses.

To the contrary, the Court’s new code of conduct creates a giant loophole, which Jane Robert’s consulting could easily fit through.

In April 2023, Senator Dick Durbin, Chair of the Senate Judiciary Committee, invited Chief Justice Roberts to testify before the SJC on the Court’s recent ethics scandals. Roberts refused the invitation, stating: “Testimony before the Senate Judiciary Committee by the Chief Justice of the United States is exceedingly rare, as one might expect in light of separation of powers concerns and the importance of preserving judicial independence.” Chief Justice Roberts’s effort to frame Durbin’s request as novel and inconsistent with historical precedent fails the most basic fact-check: As recently as 2011, Justices Antonin Scalia and Stephen Breyer testified on ethics issues before the committee.

Then again, Chief Justice Roberts has his own reasons for avoiding the SJC. Earlier this year, it was revealed that Jane Sullivan Roberts, the Chief Justice’s wife, earned more than \$10M dollars matching lawyers with high-end law firms as a consultant and recruiter. She worked for many of the same firms that routinely argue cases before the Court, cases from which the Chief Justice has not recused himself or acknowledged as presenting a conflict. To the contrary, the Court’s new code of conduct creates a giant loophole that Jane Robert’s consulting could easily fit through. Per the code, justices do not need to recuse themselves because of their own or their spouse’s entanglements with attorneys so long as the Court receives a written statement to the effect that the attorney in question will not profit from work involving the firm’s Supreme Court practice.

Moving Forward:

This year's ethics scandals prove how desperately the Supreme Court needs to adopt or be subject to an enforceable, meaningful code of ethics.

Without the threat of accountability, what incentive do the justices have to forego friends' perks, gifts, and trips? The November "Code of Conduct for Justices" offers no means of affecting, much less reining in, conduct. What is needed is an enforcement mechanism. Justice Thomas is in active violation of the code and other justices' financial entanglements suggest he may not be the only one. Yet Thomas remains an active, unsanctioned member of the Court. In 2024, AFJ will continue monitoring, untangling, and publicizing the Supreme Court's ethical failures and pushing for accountability. The justices who make the law must also follow it.



Campaigns/Advocacy:

Our campaign for a more ethical judiciary continues, with next steps including urging every member of Congress to take a stand and demand the immediate resignation of Justice Thomas — and, moreover, create a lasting framework with a mechanism of enforcement that can be applied to all justices. AFJ will continue to support and urge congressional leadership to proceed with hearings, subpoenas of the influential figures overtly buying influence at the Court, and other investigative measures to expose corruption at the Court.

Legislative Proposals for Court Reform:

Modernizing the Supreme Court with Term Limits

In October, a group of Democratic senators introduced the [Supreme Court Biennial Appointments and Term Limits Act](#), a bill that would modernize the Court, updating not just the nominations process but the structure of the Supreme Court over time. The bill is an apt response to ongoing concerns over court ethics and the long-term integrity of the Court. As public opinion research indicates, the far-right uber-majority dominating the Court has not just affected public trust on its rulings on specific issues but also confidence in the Court itself. The bill was introduced by Senators Cory Booker (D-N.J.), Sheldon Whitehouse (D-R.I.), Richard Blumenthal (D-Conn.) and [Alex Padilla](#) (D-Calif.), and it was co-sponsored by Sens. Mazie Hirono (D-Hawaii), Jeff Merkley (D-Ore.), Peter Welch (D-Vt.), and Brian Schatz (D-Hawaii).

The Senate term limits bill would establish 18-year term limits for justices, after which they would take senior status, and regularize appointments to the Court, giving presidents the power to nominate one Supreme Court justice every two years. Only the nine most recently appointed justices would be eligible to hear cases from federal appellate courts, which make up the majority of the Court's caseload. Senior justices' participation would be limited to hearing cases that fall under the original jurisdiction of the Supreme Court, such as disputes between states, or serving as a substitute for one of the nine active justices in an appellate case in which one of the nine is unavailable or recuses. The bill would render moot the novel provision advanced by the "Code of Conduct for Justices," its "rule of necessity," holding that the obligation of a justice to recuse can be trumped by the need to have all nine, or a greater proportion of the nine, on the bench in a given case.

District Court Judgeship Act:

The [2021 District Court Judgeship Act](#), sponsored by Rep. Hank Johnson, sought to expand the federal judiciary by adding 203 district court judgeships across 47 jurisdictions. The bill aimed to decrease the extreme backlog of federal cases, ensuring that federal judges are not overburdened and have time to fully and comprehensively evaluate the claims brought before them. Pre-1993, if more than 400 cases were filed with a federal judge per year, Congress would add a judge to that judicial district. In 1993, this threshold was raised to 430. The District Court Judgeship Act would lower the threshold back to 400. Increasing the number of district court judges would improve access to our court system for the millions of Americans who rely on these courts to adjudicate vital matters.

The Supreme Court Ethics, Recusal and Transparency Act (SCERT):

The [Supreme Court Ethics, Recusal, and Transparency \(SCERT\) Act](#) (S. 359/H.R. 926) would require Supreme Court justices to adopt a code of conduct, create a mechanism to investigate alleged violations of the code of conduct and other laws, increase disclosure and transparency when a justice has a connection to a party or amicus before the Court, and require justices to explain their recusal decisions to the public. Furthermore, it would enhance transparency regarding the procedure through which justices assess potential conflicts of interest with parties involved in court cases. The SCERT Act has been given a green light by the SJC with a vote of 11-10. Given the filibuster, its chances of passing are slim.



Supreme Court Preview:

The Term that began in October 2023 has already spanned landmark cases in administrative law, tax law, voting rights law, and gun control laws.

To these, the Supreme Court has added a critical reproductive justice case. Several of these cases could transform how — and how well — the federal government and its agencies work and, more than that, Americans' everyday lives.

The justices' ethical failures and refusal to reform their ways or adopt a meaningful code of conduct with a mechanism for enforcing accountability are foreboding in this context. Ideally, Americans would be able to trust our justices to rule without fear or favor. The exposure of so many startling instances of the justices accepting favors, clinging to instead of eliminating conflicts of interest, and playing favorites makes having confidence in the Court impossible.

The following summaries outline the key cases for the 2023-2034 term, as well as the potential repercussions of these cases. Many of these cases are so extreme that they would not even be on the Supreme Court's docket but for the hyper-partisan makeup of the Court and far-right justices' desire to fundamentally shift the law in furtherance of their ideological policy preferences.

Moore v. United States

(Tax Law)

Moore v. United States is a brazen attempt to upend decades of tax law and prevent the ultra-wealthy from paying their fair share of taxes. The plaintiffs in *Moore* claim that under the Sixteenth Amendment, Congress cannot tax “unrealized gains” (for example, gains from investments that haven't been sold yet). But [more than a dozen long-standing taxes](#), potentially totaling trillions of dollars, do just that to address ways that sophisticated investors and big corporations can use accounting and investment maneuvers to disguise income as non-taxable. Many of the billionaires at the center of the Court's current ethics scandals stand to profit enormously from the case, both by preempting future taxes and from the windfall that the corporations they control could receive. (Meanwhile, many of the justices would also see [their own personal net worth rise](#) by siding with the Moores.) News outlets have documented the extensive *quid* that is billionaires buying the Supreme Court's conservative justices. *Moore* could well be the *pro quo*.

During oral arguments on December 6, 2023, the Court appeared split on the best way forward. The conservative justices expressed concern that a ruling for the government would “open the door to taxation of practically everything,” while the liberal justices appeared persuaded by the federal government's argument that there is a long history of taxing this type of income.

Loper Bright Enterprises v. Raimondo

(Administrative Law, Environment & Climate)

In *Loper Bright*, the Court could fundamentally transform the way our government functions by limiting the decision-making power of administrative agencies. Though the dispute at the center of this case surrounds fisheries, the larger issue is the [Chevron Doctrine](#). The *Chevron* Doctrine, dating back to 1984, is at the core of administrative law and requires courts to defer to agency expertise. *Chevron* is critical to agencies' ability to quickly and aptly interpret and execute federal policy. This comes into play when, for example, the Food and Drug Administration (FDA) must determine whether a new medication is safe and effective. The agency is staffed with thousands of experts, from public health specialists to research scientists to physicians, who work together to make complex decisions like these. If the Court overturns *Chevron*, individual judges could usurp these experts, transforming the way complex policy decisions are made across agencies and paving the way for a monumental power grab by federal judges like Judge Matthew Kacsmaryk of the mifepristone case.

The Court heard oral argument in *Loper Bright* on January 17, 2024. The conservative majority appeared poised to overturn the *Chevron* doctrine, with Justice Neil Gorsuch taking a strong stance against the doctrine. Justices Jackson, Elena Kagan, and Sonia Sotomayor spoke at length in favor of agency expertise — emphasizing the administrability problems with overturning a 40-year-old legal precedent.

United States v. Rahimi

(Gun Safety, Second Amendment)

Rahimi presents the Supreme Court with the chance to clarify which categories of gun control laws are permissible under the Second Amendment following the Court's disastrous 2022 ruling in *Bruen*, which held that gun restrictions must be rooted in the history and tradition of the United States to be constitutional. The case concerns a federal law that bars those with domestic violence restraining orders from possessing firearms. Mr. Rahimi, who was sent to jail for possessing a gun while subject to a domestic violence restraining order, argues that since there were no domestic violence restrictions on gun ownership during the Founders' era, the restriction is unconstitutional. These types of regulations on gun ownership are critical for protecting people who have experienced domestic violence and face threats of further violence, as well as for providing them with the opportunity to protect themselves without seeking criminal prosecution.

At oral argument, the Court appeared likely to uphold the domestic violence restriction on gun ownership. Justices Sotomayor, Kagan, Jackson, and Amy Coney Barrett expressed the most vocal disapproval of Rahimi's argument.



Consumer Financial Protection Bureau v. Community Financial Services Association of America

(CFPB Funding)

This case concerns congressional funding of administrative agencies, specifically the Consumer Financial Protection Bureau ("CFPB"). The CFPB was created to protect consumers from predatory lending practices. The CFPB adopted a rule that prohibited lenders from further attempting to withdraw funds from borrowers' bank accounts after two consecutive attempts failed for lack of funds. A group of lenders [sued the CFPB](#) over that rule, arguing that the agency's funding scheme was unconstitutional because the CFPB receives funding directly from the Federal Reserve instead of receiving money allocated to it each year by Congress. This case could dismantle the CFPB and affect other independent agencies, including financial regulators like the SEC and FDIC, upending regulations that borrowers and consumers depend on to protect them from wrongdoing in the financial services industry.

Oral arguments took place on October 3, 2023. Justices Thomas, Alito, Gorsuch, and Roberts appeared amenable to the CFSA's argument. Justices Jackson, Kagan, and Sotomayor were sympathetic to the CFPB and Justices Barrett and Brett Kavanaugh seemed dubious of the CFSA's argument.

Alexander v. South Carolina State Conference of the NAACP

(Democracy & Voting Rights)

Alexander v. South Carolina State Conference of the NAACP is a landmark racial gerrymandering case that could profoundly impact the voting rights of Americans of color. Last year, a federal court in South Carolina found that Republican legislators engaged in racial gerrymandering in the creation of their new electoral maps. On appeal, the Republican legislators argued that they only engaged in partisan gerrymandering, not in racial gerrymandering. The Supreme Court has previously ruled that, while racial gerrymandering is barred, partisan gerrymandering is not reviewable by federal courts. Partisanship and race can be very closely related; [90% of Black voters](#) in South Carolina voted Democratic in the last presidential election. Therefore, if the South Carolina map is upheld, legislators engaged in racial gerrymandering could simply claim they are engaged in partisan gerrymandering and those gerrymandered maps will be upheld. The outcome of *Alexander* could significantly impact the ability of voters of color to enjoy true political representation.

On October 11, 2023 the Court heard oral arguments in *Alexander*. The Court's conservatives appeared to side with the South Carolina legislators, repeatedly asking questions that facilitated legislators' efforts to argue that the electoral map was drawn based on partisanship not race. The Court's liberal justices focused on the standard of review, pointing out that in the absence of clear error, the Court must let the decision stand.

**Muldrow v. City of
St. Louis, Missouri**

(Labor & Economic Justice)

In *Muldrow v. City of St. Louis, Missouri*, the Court will evaluate what types of harms are sufficient for a plaintiff to succeed on an employment discrimination claim under Title VII. Muldrow, the plaintiff in this case, is a police sergeant who sued the City of St. Louis for employment discrimination, claiming she was transferred to a different department because of her sex. The Court will decide whether this type of transfer, which did not substantially impact the plaintiff's job duties, benefits, or salary, constitutes the type of harm that can be redressed under Title VII. A ruling in Muldrow's favor would make it easier for employees facing discrimination to bring legal claims. On the other hand, a bad ruling by the Court could make it easier for employees to bring so-called "reverse-discrimination claims" against diversity, equity, and inclusion initiatives.

The Court held oral argument in *Muldrow* on December 6, 2023. The justices appeared split on the best course of action. There was a consensus that some harm beyond discrimination is required but the current "significant harm standard" was heavily critiqued by both liberals and conservatives.

**Food and Drug
Administration
v. Alliance for
Hippocratic
Medicine and
Danco Laboratories
v. Alliance for
Hippocratic
Medicine:**

(Reproductive Rights)

Conservative challenges to the FDA approval and accessibility of a drug used in medication abortions, mifepristone, have generated a tangled pair of cases that the Supreme Court decided on December 13, 2023 that it would hear together later this term. The issue has more or less been on pause since justices granted the Biden administration's spring 2023 request to maintain the status quo of medication availability until the issue was fully litigated. The drug dispute originated with an overreaching ruling from the now-notorious Judge Kacsmaryk of the U.S. District Court for the Northern District of Texas. He ruled on the FDA's initial 2000 approval of mifepristone, which the Supreme Court has declined to review, but the notoriously conservative U.S. Court of Appeals for the Fifth Circuit upheld his rulings against more recent FDA expansions of access to the drug.

Conclusion:

For a few good reasons and all too many bad ones, 2023 was a landmark year for our nation's courts.

We saw historic nominations, historic confirmations, and, at the same time, historic scandals and drops in public confidence in our judicial institutions. We at AFJ remained steadfast in our mission to transform the judiciary and see through the nomination and confirmation of diverse, fair-minded, and highly qualified candidates to the federal bench who will both uphold and embody the highest ethical standards. Having made significant progress toward that goal this year, we stand proud of our successes and the work we have led in coalition with our members and other organizations.



AFJ takes tremendous pride in the depth and breadth of its contributions to restoring and diversifying the federal bench.

Chief among AFJ's accomplishments is the leading role it and AFJ Action played in pushing the Supreme Court to formally acknowledge and respond to its ethics crisis. AFJ's relentless advocacy, beginning with our #ThomasResign campaign, [launched in May](#), was pivotal in provoking the Supreme Court's first-ever "[Code of Conduct for Justices](#)." Despite its glaring inadequacies, loopholes, and carveouts, the code marks a major victory for proponents of a fair, ethical, and just judiciary. Only genuine fear of the consequences of growing public and congressional scrutiny, driven and amplified by AFJ and allies, and awareness of the justices' ethical foibles — both those known and those yet to be exposed — could have brought about this unprecedented move by the Supreme Court.

AFJ takes tremendous pride, too, in the depth and breadth of its contributions to restoring and diversifying the federal bench. From identifying and nurturing potential jurists through Building the Bench and holding events with current federal judges targeting movement lawyers to encouraging and supporting applicants through the process of seeking senators' endorsement, White House nomination, and Senate confirmation, AFJ has been busy. The results are incontestable and a source of well-earned pride: the steady nomination of exceptional candidates from diverse personal and professional backgrounds, each with unique stories to share.

This holiday season, AFJ celebrated the appointment of the first Black woman to serve on the Eleventh Circuit, the first Muslim woman to the federal bench, and the first Latino to join the D.C. Circuit. We are further delighted to fête nominees Mustafa Kasubhai, to the U.S. District Court for the District of Oregon, Adeel Mangi, to the U.S. Court of Appeals for the Third Circuit, and Nicole Berner, to the U.S. Court of Appeals for the Fourth Circuit, whose statements and responses during the Senate Judiciary Committee's December 13, 2023 hearing proved their brilliance and fair-mindedness. When confirmed, Judge Kasubhai will be the first Muslim to serve on Oregon's federal district court; Mr. Mangi will become the first Muslim American federal appellate judge ever; and Ms. Berner will be the first openly LGBTQ+ judge on the Fourth Circuit. All have international roots and long records of public service. Given so few federal judges have a background in economic justice or labor law — [the figure stood at 6% a little over a year ago](#) — we will be especially glad to see Ms. Berner and Judge Kasubhai, long-time labor lawyers, join the bench.

By the end of 2023, the Senate had confirmed 166 of President Biden's lifetime judicial nominees. More than 100 of these nominees were women and people of color.

By the end of 2023, the Senate had confirmed 166 of President Biden's lifetime judicial nominees. More than 100 of these nominees were women and people of color. These judges have begun to redress the harm perpetrated by the prior administration and the unjust rulings of the unqualified ideologues it confirmed in lieu of fair-minded jurists. Biden judges are addressing crucial matters such as workers' rights, voting rights, civil rights, criminal justice, and environmental justice, ensuring a brighter future for all.

AFJ anticipates kicking off an exciting 2024 with a wave of new and exceptional nominations to the federal bench. Filling this nation's judicial vacancies must be a priority and we hope to see these vacant seats filled by more historic candidates. At time of writing, there are 88 vacancies on our nation's federal courts. This includes nine circuit court vacancies and 79 district court vacancies. In 2024, we must work to fill these vacancies with some of our long-waiting nominees and more historic firsts. Twenty-five district courts have never had a judge of color, three district courts have never had a female judge, and no lawyers with significant LGBTQ+ or environmental-related expertise have ever been confirmed to the federal bench. 2024 is the year to change that and to [fight for an expansion of the lower courts](#). This data-driven approach was established by Congress to ensure our courts can keep up with caseloads. Expansion will provide further opportunities to strengthen and diversify the bench and promote access to justice for those harmed by unnecessary delays and the backlog.

In conclusion, we extend our utmost thanks to all the member organizations, coalition partners, legislators, and Hill staffers who made this year's major wins possible. We look forward to carrying the fight for fair courts into the new year beside you.

