



The Supreme Court of the State of North Carolina in Raleigh. (Aaron Mendelson / Center for Public Integrity)

HIGH COURTS, HIGH STAKES

America's state supreme courts don't look like America

The racial and ethnic makeup of state high court justices doesn't match the nation's. And the gap in representation has gotten worse, a Public Integrity analysis reveals.

by Aaron Mendelson September 6, 2023

Over the last three-plus decades, America's state supreme courts have become less — not more — reflective of the nation's racial and ethnic makeup.

That's according to a Center for Public Integrity analysis of data from the Brennan Center for Justice at New York University School of Law and [academics James Gibson and Michael Nelson](#). The data shows that in 1990, 92% of state high court justices were white — a figure that meant white justices were overrepresented by 16 percentage points when compared to the demographics of the nation as a whole.

In 2023, white justices made up 81% of state high court benches. But given the nation's changing makeup, the figure means they are now overrepresented by 22 percentage points.

The lack of representation is especially acute for Latinos, who make up just 5% of state high court justices in 2023 — despite accounting for 19% of the U.S. population.



This story also appeared in [USA TODAY](#)

“Reducing that gap is critical,” said Steven C. González, the chief justice of the Washington Supreme Court.

Researchers and justices say who sits on the bench can lead to different conversations as judges deliberate, and ultimately to different outcomes. Justices can also push to change administrative rules based on their own personal experiences. “We’re umpires calling balls and strikes *and* deciding what the strike zone is,” González said. “Having a mixed group there can provide a richer discussion.”

In 18 states, high courts had all-white benches, according to the data the Brennan Center collected in May 2023.

Representation on state high courts lags far behind country's demographics

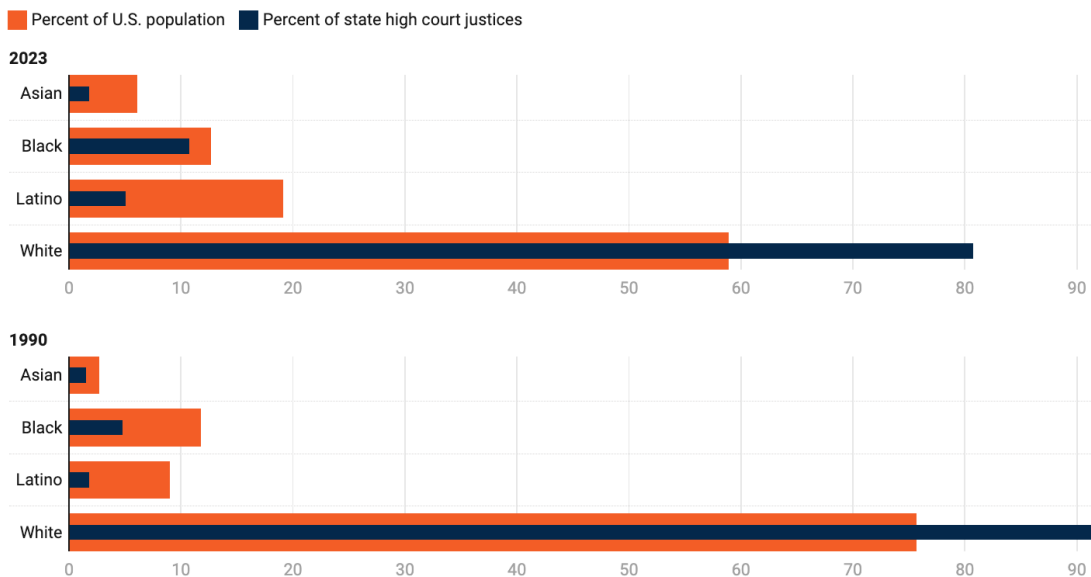


Chart: Aaron Mendelson / Center for Public Integrity • Source: Brennan Center (2023); James Gibson & Michael Nelson (1990); U.S. Census Bureau (population) • Created with [Datawrapper](#)



This demographic mismatch comes alongside an increasingly successful effort to push high courts to the right, the subject of [a recent Public Integrity investigation](#). Nationally, state supreme courts have flipped from Democratic control in the 1980s, '90s and early 2000s to a Republican majority in recent years. The implications for abortion, LGBTQ+ rights and voting are massive, and in some places only beginning to be felt.

As the parties have waged political battles over the courts, the share of women on the bench has steadily climbed. In 1990, just 10% of state supreme court justices were women. In 2023, that figure hit 42%.

The figure still falls short of women’s share of the U.S. population — just over 50%, according to the U.S. Census Bureau — and masks significant variation at the state level.

Representation on state high courts lags behind country's demographics

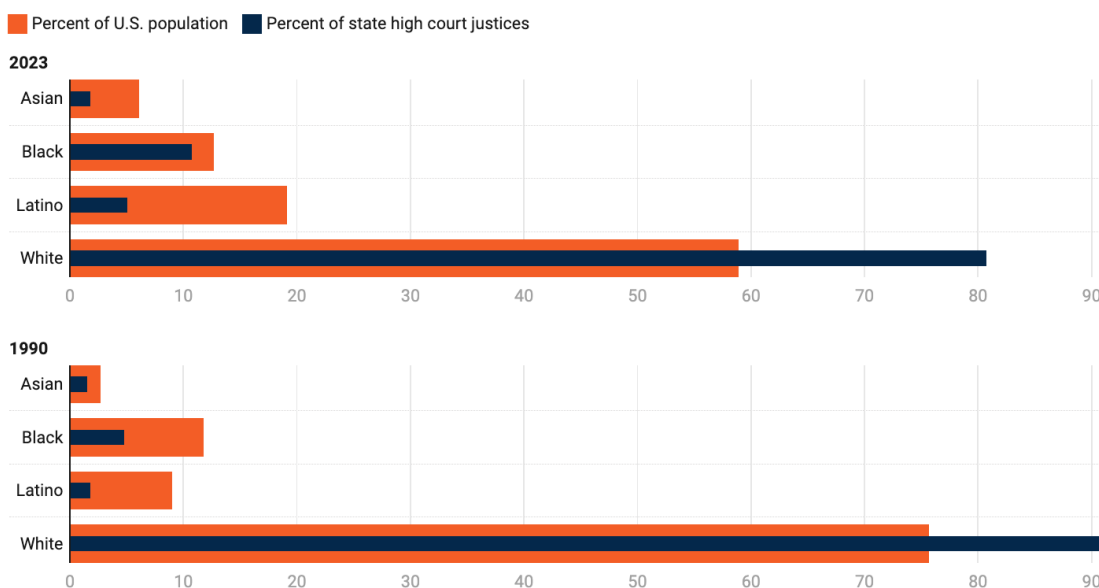


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In South Carolina, none of the five supreme court justices are women. It’s the only such court in the nation without a female justice.

“It’s an embarrassment,” said Kaye Hearn, a former justice on the South Carolina Supreme Court who reached the state’s retirement age of 72 for judges in February. “I’ve always felt that it’s important for litigants and lawyers to look up on whatever bench they’re before, and see someone who looks like them.”



In January, Hearn wrote the opinion that [struck down](#) a six-week abortion ban in the state, joined by two of her male colleagues. She said that the two male justices who dissented “did not ever appreciate that at six weeks, many women do not even know they’re pregnant, let alone have time to make the momentous decision to have an abortion, schedule an appointment and get it done.”

The ruling attracted national attention, and underlined the immense power of state supreme courts to decide what rights residents do, and do not, possess.

State legislators in South Carolina responded to the decision by passing [similar restrictions](#) this spring. In a ruling last month, the state’s newly all-male high court reversed course and [ruled in favor](#) of the six-week abortion ban.



South Carolina’s Supreme Court is the only one in the nation with no female justices. From left to right: Chief Justice Donald W. Beatty, Justice John W. Kittredge, Justice John Cannon Few, Justice George C. James Jr. and Justice D. Garrison Hill. (Photos courtesy of the South Carolina Supreme Court)

‘Those numbers are difficult to overcome’

A host of academic research has found that the race and gender of justices can impact rulings.

One study [found](#) that Black federal judges are “significantly more likely than nonblack judges to support affirmative action programs.” But the influence extends beyond any individual judge. The study also showed that the presence of a Black jurist on a panel of judges “increases the probability that a nonblack judge will rule in favor of an affirmative action program by about 20 percentage points.”

Another study [found](#) that female judges guided parties to settlements more quickly and more often than male judges. And female federal judges not only ruled differently in sex discrimination cases — their presence also made their male colleagues “significantly more likely to rule in favor of the rights litigant.”

(That study [found](#) no difference between male and female judges in 12 other areas of law.)



Judicial diversity “matters for rulings,” said Maya Sen of Harvard University, who in 2021 provided testimony to a U.S. Senate subcommittee on the issue. “If we want the rulings to be reflective of the preferences and interests of the broader American population, then diversity in judges is an important way to get there,” she told Public Integrity.

The makeup of the bench also shapes how Americans walking through the doors of courthouses view their experiences. The National Center for State Courts [found](#) “a massive racial gap” in perceptions of the justice system in 2015, with Black respondents reporting much lower levels of trust than other Americans.

A more diverse bench may be one way to reduce that gap: Greater representation of Black judges in courts leads to greater feelings of legitimacy towards the institutions among Black Americans, one study [found](#).

“It just instills confidence in the public, that they might get a shot at somebody who understands them,” said Leah Ward Sears, a former chief justice on Georgia’s high court.

Sears became the first woman on Georgia’s Supreme Court when she joined the bench in 1992; her cousin, John Charles Thomas, became the first Black justice on Virginia’s high court in 1983.

She added that all sorts of nuances aren’t captured by demographic data. Her upbringing — she was born on a military base in Heidelberg, Germany, and grew up middle-class in Georgia — was considerably different from that of her colleague Robert Benham, the state’s first Black justice, who was a decade older and grew up attending segregated schools.

Some justices cited the academic research on judicial diversity in their interviews with Public Integrity. Washington Chief Justice González was the subject of a study that examined voting patterns and [found](#) the “textbook definition of racially polarized voting” in his 2012 primary race. In the election, González underperformed a white candidate in a separate election



Leah Ward Sears, who became the first woman on the Georgia Supreme Court when she joined the bench in 1992. (Photo courtesy of Smith, Gambrell & Russell)

— as current supreme court justices, they were both incumbents — by 24 percentage points in Yakima County. The races were nonpartisan, leading researchers (and the future chief justice) to conclude that voters were casting ballots based off his name.

“That’s daunting. Those numbers are difficult to overcome,” González said. “I believe it will be easier for those who follow. But that was the first time someone with a Latino surname had ever been elected statewide, in Washington state.”

Other studies have documented racially polarized voting patterns in judicial elections in California, Louisiana and Texas. The Brennan Center’s Alicia Bannon said that elections are “almost never a path to the bench for people of color.” A [report](#) she wrote in 2019 found that justices of color were more likely to be challenged than white justices, even as incumbents. (Many justices initially reach the bench by appointment, even in states that have judicial elections.)

The report and its [follow-ups](#) have also documented the lack of professional diversity on the bench. “That’s another area where state supreme courts don’t reflect the diversity of the legal profession,” Bannon said. While many justices have experience in private practice (87%) or as a prosecutor (38%), very few have worked as public defenders (9%) or in civil legal services (2%).

And a disproportionate share of high court justices graduated from elite law schools, further limiting diversity of experience.

Lawyers and scholars say that when elected officials appoint justices, politics comes before diversity. At times, the issues have collided. In late August, North Carolina Supreme Court justice Anita Earls [filed a federal lawsuit](#) alleging that a state oversight commission is investigating remarks she made about the lack of diversity in the state’s court system. The investigation could lead to a range of potential punishments for Earls, a Black woman and a Democrat, including removal from the bench.

The North Carolina high court’s current conservative majority [was the fruit of a years-long effort by Republicans](#), who moved the state from nonpartisan to partisan judicial elections. Significant 2023 rulings on voting have split on racial lines, with the court’s five white Republicans in the majority, and its two Black Democrats dissenting.

Some observers worry that changes to how judges reach the bench, [like those tracked by Public Integrity in eight Republican-led states](#), will harm fragile efforts to build a representative bench.



“When you trust your dispute to a judge, you want that judge to be the best and the brightest. You also want them to reflect the general population of the state,” said Erik A. Christiansen, president of the Utah State Bar, which opposed a 2023 law that hands greater power to the governor in appointing justices.

“My fear is that now we’re just going to get a bunch of white, LDS [Latter-day Saints], Republican men appointed to the bench. And I think that that would be a disservice to the citizens of Utah, who are widely diverse,” he said.

Experts say that diversifying the legal profession is key to representation on the bench. While a majority of law school students are now women, Black and Latino attorneys make up just 5% and 6% of the profession, respectively, according to an American Bar Association [report](#).

“The profession is not representative of the people,” Sen said. Diversifying elite law schools, she added, would be one avenue to diversifying state high courts.



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