

TESTIMONY BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON COURTS, INTELLECTUAL PROPERTY, AND THE INTERNET

The Importance of a Diverse Federal Judiciary, Part 2:

The Selection and Confirmation Process

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Statement of Honorable Monica M. Márquez

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Mr. Chairman, Ranking Member, and Distinguished Members of the Subcommittee, I am honored to address you today about efforts in Colorado to increase the diversity of our state court bench.

My name is Monica Márquez, and I am the senior Associate Justice on the Colorado Supreme Court. I have been involved in efforts to improve diversity in the legal profession in Colorado for over 20 years.

Although the statistics I share today focus on race and gender, when I speak of “diversity” in the judiciary, I mean that term broadly. Diversity encompasses sexual orientation, religious affiliation, physical ability, and geographic and socioeconomic factors that make up a judge’s life experience, as well as a judge’s professional background and areas of expertise.

Although Colorado still has room for improvement, we have made strides in recent years in addressing the lack of diversity on our state bench. I will highlight some of our efforts.

A Brief Overview of Colorado Courts

Colorado has a merit selection system for judicial appointments. Candidates for trial court vacancies submit applications to a local judicial nominating commission; appellate court candidates submit materials to a statewide nominating commission. These commissions are comprised of a politically balanced group of lawyers and non-lawyers collectively appointed by the Governor, Attorney General, and Chief Justice.¹ The commissions interview applicants and tender a short list of 2 to 3 names to the Governor, who then has 15 days to appoint someone from that list. Once appointed, our judges then stand periodically for retention in uncontested elections and may serve until mandatory retirement at age 72. Separate judicial performance commissions provide voters with public evaluations of judges who are standing for retention.

We currently have 332 judges serving in our state courts²: 7 Supreme Court justices, 22 Court of Appeals judges, 194 District Court judges, and 109 County Court judges. These judges serve in Colorado's 22 judicial districts across a state that spans 100,000 square miles and includes 5.77 million inhabitants.³ Colorado's population is over 21% Hispanic or Latinx, 4% Black or African American, 3% Asian American, 1% Native American, and 4% multiracial.⁴ But among our state court judges, only 9.3% are Hispanic or Latinx, 3.3% are Black or African

¹ Colo. Const. art VI, § 20 et seq.

² These figures are as of June 30, 2021 and do not include Magistrate, Water Referees, or Denver County Court judges.

³ United States Census Bureau (2020).

⁴ Id.

American, 1.8% are Asian American, 0.3% are Native American or Alaska Native, and 0.9% are multiracial.

Our Successes

Many individuals and organizations have worked tirelessly to diversify the legal profession in Colorado, including its judiciary. In late 2018, however, these efforts took on renewed intensity. Retired Denver County Court Judge Gary Jackson issued a call to action when, following a series of retirements, Colorado was left without a single Black district court judge serving in our state court system. This underrepresentation was emblematic of the lack of diversity throughout our state courts, prompting several leaders in the Colorado legal community to make diversifying the bench an urgent priority.

Since then, we have made progress on multiple fronts. As of today, approximately 41% percent of judges in Colorado are now women, and 19% of our female jurists are women of color. We now have 12 Black, 31 Hispanic or Latinx, 6 Asian, 1 Native American, and 3 multiracial judges – reflecting increases in each of these categories since 2018. We have seen more Black women appointed to our state court bench in the past 18 months than in the past 25 years combined.

Colorado's Strategies and Lessons Learned

Three key factors have contributed to our success.

First, we are making creative, long-term investments in our efforts to diversify our state bench. With bipartisan support and the leadership of State Representative Leslie Herod, the Colorado General Assembly enacted legislation in 2019 that included the creation of a full-time

position in the Colorado Judicial Branch responsible for education and outreach efforts regarding judicial vacancies and the judicial application process.⁵ Sumi Lee, our Head of Judicial Diversity Outreach, began her work in this new role at the Colorado Judicial Department in February 2020. To the best of our knowledge, Colorado is the first state in the nation to have a position of this kind within the judicial department. Ms. Lee has been instrumental in consolidating and systematizing our previous ad hoc, volunteer efforts by collecting and centralizing key data, fostering community partnerships, developing robust educational and outreach programming, and serving as the go-to hub of our activity in this area.

Second, it has become clear that achieving judicial diversity is the work of the whole community. Certainly, Governor Jared Polis and his leadership team have been critical in achieving our recent successes. He has appointed more Black women judges than his 42 predecessors combined, and fully half of his judicial appointments in 2020 were people of color. That said, developing a pipeline of diverse judges requires sustained effort on multiple fronts. Over the years, a small army of judges and attorneys laid the groundwork for what has become a movement in Colorado. For example, in 2019, the Colorado Judicial Institute and the Colorado Bar Association joined forces to establish a Diversity on the Bench Coalition. The Coalition consists of 19 representatives, including affinity bar presidents, law school deans, judges, attorneys from large and small firms, and members of the Attorney General's office. Patricia Jarzowski, past president of the Colorado Bar Association and Colorado Women's Bar Association, and Judge Gary Jackson chair the Coalition, which partners with 60 community leaders representing over 27 community organizations to work toward five main goals:

- Developing viable candidates for judicial vacancies;

⁵ Colo. Rev. Stat. § 13-3-101(11) (2020).

- Increasing diversity on nominating commissions and developing additional voluntary training for commissioners;
- Educating decision makers at all levels of the merit selection process of the value of a diverse bench;
- Fostering accountability by tracking appointments to judicial positions as well as nominating commissions; and
- Promoting the value of, and need for, a more diverse judiciary through focused messaging, articles, and outreach to the broader community.

Separately, the Center for Legal Inclusiveness (“CLI”) and the Colorado Judicial Department created the Bench Dream Team, a group of state court judges dedicated to diversity and inclusion in Colorado’s judicial system. The Bench Dream Team worked with CLI, the affinity bar associations and past commission members to update an orientation video for our judicial nominating commissions. This video features a broad cross-section of Colorado state court judges and nominating commission members and is narrated by Adele Arakawa, a locally well-known news anchor, who graciously volunteered her time and talent. The orientation video explains the responsibilities of a judicial nominating commissioner, offers guidance on reviewing materials and conducting interviews, and includes a segment on strategies for mitigating implicit bias in the judicial nominating process. This fall, the Bench Dream Team will pilot a new, six-month, intensive coaching program to support diverse candidates for judicial vacancies. This pilot program will help establish a blueprint for future recruitment and training of judge coaches to expand our Dream Team roster and provide resources for applicants statewide.

Although many of our efforts focus on current candidates for judicial vacancies, our candidates come from our attorney ranks, which also do not reflect the general population in

Colorado. We therefore have recognized that we must build a better pipeline to the legal profession itself and have extended our development efforts to college and law students.

Law School Yes We Can (LSYWC) is a shining example of such a program. Launched by Judge Christine Arguello, the first Latina to serve in federal district court in Colorado, LSYWC supports college students from underrepresented communities and prepares those students to apply for law school. The program provides each Fellow with team of mentors throughout their college years, one of whom is a current law student, one of whom is a junior or mid-level attorney, and one of whom is a more senior attorney or judge. In addition to regular, sustained mentorship, LSYWC offers networking opportunities, leadership training, mock interview experience, and LSAT preparation. Since the program's inception in 2014, over 400 lawyers and judges have mentored nearly 80 Fellows, 97% of whom graduate college. A growing number of LSYWC Fellows have now graduated law school and entered the legal profession.

Several programs in Colorado provide critical experiential learning opportunities for diverse law students. For example, the Judge Lorenzo Márquez Appellate Externship program, named after my father, who started the program over 25 years ago, invites diverse students from Colorado law schools to experience the appellate process, improve their writing and legal analysis, and work closely in chambers with judges and their law clerks. A growing number of Lorenzo Márquez Scholars have gone on to obtain judicial clerkships upon graduation. Federal Magistrate Judge Kristen Mix and the Colorado Attorney General offer similar externship opportunities, and the Colorado Pledge to Diversity Summer Clerkship Program offers paid summer internships to diverse Colorado and Wyoming law students.

More recently, in response to the impact that the pandemic has had on networking opportunities, our appellate court committees working on diversity, equity, and inclusivity teamed with our Judicial Diversity Outreach program to create a “virtual coffeehouse” called Java with Judges. Each Java session brings together an appellate judge, a trial court judge, a law clerk, and up to six law students in a virtual setting for casual conversation. We have received an overwhelmingly positive response to this program from students, many of whom have since obtained externships and clerkships as an indirect result of this program.

Third, and finally, we understand the importance of visibility. It is difficult to be what you cannot see. So, to ensure that future potential judicial candidates can “see” what they can become, we make sure to celebrate our successes. In May, we hosted a virtual reception to recognize Colorado’s Asian Pacific American judges; this fall, we will partner with our law schools to host a reception at the Colorado Supreme Court for our Black and African American judges. More broadly, the shift to virtual meetings during the pandemic has boosted our engagement with judges and potential judicial candidates in rural parts of Colorado. Through partnerships with the Colorado Bar Association, local bar associations, affinity bar associations, and Inns of Court, we hope to light pathways to the bench from all four corners of our state.

Looking forward, we recognize our responsibility to ensure that our bench is not merely diverse, but inclusive and supportive of all our judicial officers. We know it is critical to foster a sense of belonging and a culture of well-being to support judicial officers’ professional development and ensure job satisfaction and career longevity. Our newly formed Standing Committee on Judicial Well-Being is exploring the intersection between diversity and well-being and represents another example of our long-term investment in building a more diverse bench.

In closing, based on my decade of experience on the appellate bench, I can attest that having a diverse collection of backgrounds and life experiences among the judges on a court leads to richer and fuller discussions of the issues presented and, ultimately, better and more thoughtful decisions. But equally importantly, a diverse bench ensures that our courts reflect the communities they serve. Every day across this country, our judges resolve disputes involving people from all walks of life. For litigants, coming to court is a very stressful experience because so much is at stake. Property, livelihoods, reputations, family relationships, or even life and liberty can be on the line. A litigant who has confidence that the judge deciding her case has some sense of her life experience eases some of that stress and enhances her trust that the decision rendered will be fair – even if the judge ultimately rules against her. In short, having a diverse judiciary strengthens public perception that the justice rendered by our courts is truly equal. That perception of legitimacy is critical; it promotes confidence in, and respect for, the decisions rendered by our courts and thus strengthens the rule of law itself.

Thank you for your attention to these important issues.

For more information:

Colorado Judicial Branch – Judicial Diversity	https://www.courts.state.co.us/
Colorado Merit Selection System	https://www.courts.state.co.us/Courts/Supreme_Court/Nominating.cfm <i>see also</i> Colo. Const. art. VI, § 20 et seq.
Colorado Pledge to Diversity	https://coloradopledge.org/
Diversity on the Bench Coalition, a collaboration of the Colorado Bar Association and the Colorado Judicial Institute	https://www.cobar.org/For-Members/Diversity-on-the-Bench
Bench Dream Team, a collaboration of the Center for Legal Inclusiveness and the Colorado Judicial Department	https://centerforlegalinclusiveness.org/Bench-Dream-Team
Law School Yes We Can	http://lawschoolyeswecan.org/
Judge Lorenzo Márquez Appellate Externship Program	http://www.coloradojudicialinstitute.org/download/7.2020+Judges%27+Corner.pdf
Colorado Judicial Nominating Commission Orientation Video	https://www.youtube.com/watch?v=sMYRFay2-xo
Colorado Judicial Well-Being	https://judicialwellbeing.colorado.gov/