

# Trends: Close Up

February 2017

## Women on the Bench

For the past ten years, the National Center for State Courts has tracked the number of female justices serving in the state courts of last resort. Our data track 53 courts because we include the D.C. Court of Appeals, the Texas Court of Criminal Appeals, and the Oklahoma Court of Criminal Appeals. The most noticeable trend in the past ten years has been the steady increase in the number of courts of last resort whose number of female justices equals or exceeds 50 percent of the court's total membership.

### Female-Majority Benches

Female-majority benches are a relatively recent trend in state courts of last resort. In 2007 there were only 4 states with majority-female benches: D.C., New York, Tennessee, and Wisconsin. That number stayed relatively constant until 2012, when 9 states had female-majority benches. Double digits finally appeared in 2016 when, for the first time in the history of the United States, there were 11 courts of last resort with female-majority benches. As of the beginning of 2017, there are 11 female-majority benches in Arkansas, California, Maryland, Massachusetts, Minnesota, New Mexico, New York, Tennessee, Washington, Wisconsin, and West Virginia.<sup>1</sup>

Technically, the first female-majority bench occurred in 1925, when the governor of Texas appointed three female attorneys to a special session of the Supreme Court of Texas.<sup>2</sup> For five months Nellie

### About the Series



These special reports are part of the National Center for State Courts' "Trends in the State Courts" series and serve as informative and timely updates for state court leaders. Any opinions expressed herein are those of the authors, not necessarily of the National Center for State Courts.

Robertson, Edith Wilmans, and Hortence Sparks Ward convened to hear the case of *Johnson v. Darr*, 114 Tex. 516 (1925). One of the parties connected to the case, a fraternal organization called the Woodmen of the World, was an organization to which a majority of the state's judges and attorneys belonged. The case languished for almost a year before Governor Pat M. Neff, an early supporter of women's rights, appointed the all-female bench.

In 1991 Minnesota became the first state to have its permanent court of last resort obtain a majority of female justices. At that time, only one other state, Oklahoma, had more than one female justice sitting on its highest court.<sup>3</sup> Of the nation's 53 courts, only 27 had at least one female jurist in 1991. In the decade that followed, the trend of "first female justice to the Supreme Court" appeared in many a state's news headlines. By 2002, all 53 courts of last resort had at least one woman serving on their bench. The next decade of headlines read "first female chief justice," and by 2016, 77 percent of all state courts of last resort (41 out of 53) have had a female serve as chief justice.

1 At the time of print, it remained unclear whether North Carolina would add two new justices to their bench. Therefore, only seven justices were included in North Carolina's data.

2 David A. Furlow and Lynne Liberato, "History Revisited," *Texas Bar Journal* 79, no. 5 (2016): 357-359.

3 David Margolick, "Women's Milestone: Majority on Minnesota Court," *New York Times* (February 22, 1991). Retrieved from <http://www.nytimes.com/1991/02/22/news/women-s-milestone-majority-on-minnesota-court.html?pagewanted=all>.



For the first time in U.S. history, women now make up a majority of law students.

### Diverse Representation

Public trust and confidence in the courts' ability to dole out justice is perhaps the most important aspect of the legitimacy of the judicial branch. As such, diverse representation of certain identity indicators, such as gender and race, are extremely important, and something that the judicial branches of the United States are still trying to accomplish. The struggle for women to get significant representation in the federal and state judicial branches can be partially attributed to law-school policies before the 1960s. Up until that point, many law schools had official policies to not admit women, or if they did not have an official policy they still only accepted a few women to each class. For example, Harvard did not admit women to their law school until 1950, and even then women only comprised 3 to 4 percent of the class.<sup>4</sup> But, for the first time in U.S. history, women now make up a majority of law students.<sup>5</sup> And according to the latest numbers from the ABA,

of the 18,006 state court judges in the United States, 5,596, or 31.1 percent, are women.<sup>6</sup> NCSC data, as of the beginning of 2017, shows that 125 of the 350 justices currently sitting on a court of last resort are female. Therefore, women make up 35.7 percent of all justices on state courts of last resort and, thus, have a slightly better representation among the highest courts in the states than they do in the lower courts.

NCSC will continue to collect data on women serving on courts of last resort. Whether women behave differently from men on the bench is unclear, but the public's perception of fairness can certainly be affected by a bench's diversity or lack thereof.

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\* For an electronic copy of this report, please visit [www.ncsc.org/trendscloseup](http://www.ncsc.org/trendscloseup)

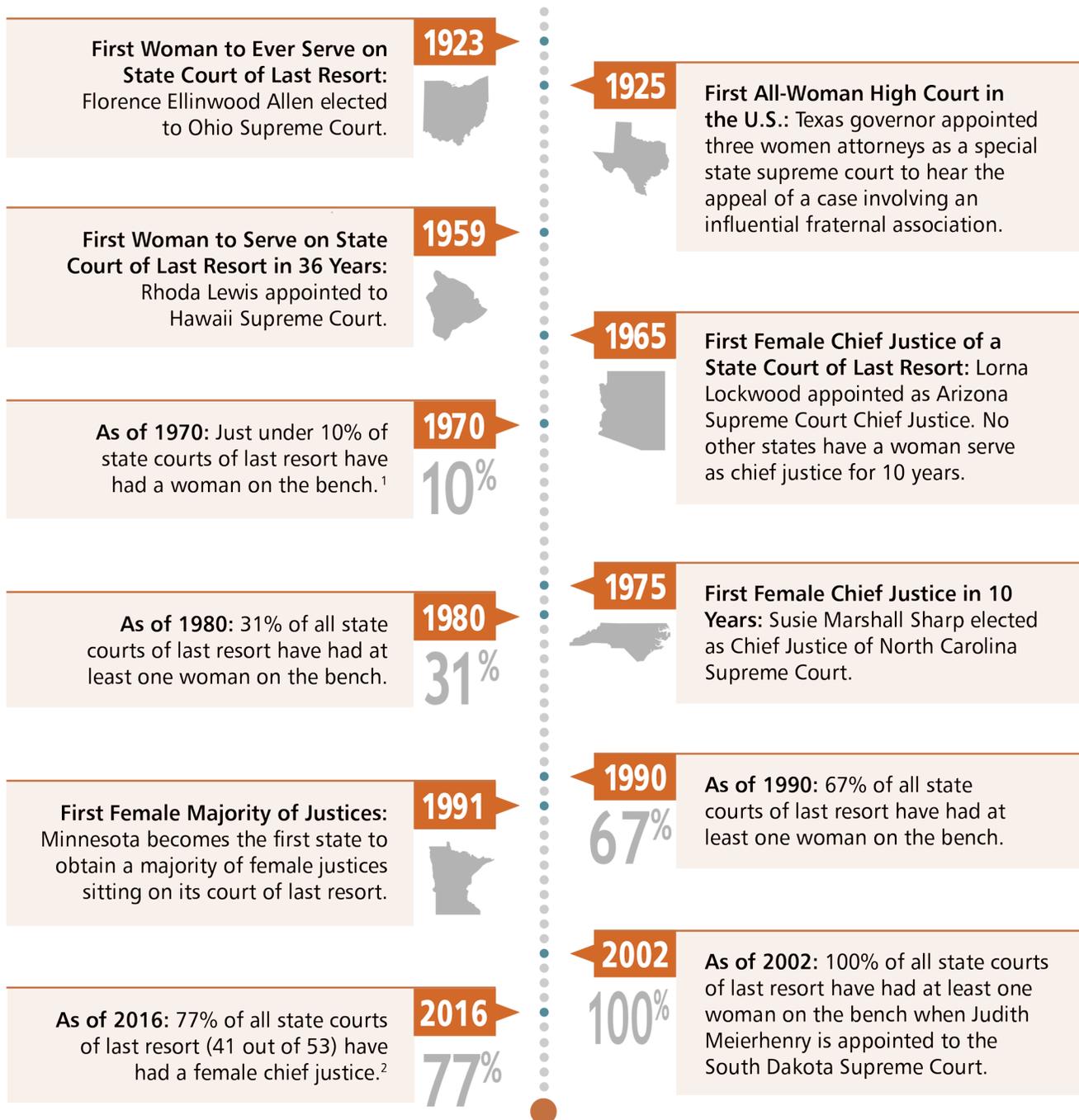
4 Barbara Palmer, "'To Do Justly': The Integration of Women into the American Judiciary," *PS: Political Science and Politics* 34, no. 2 (2001): 235-239.

5 Elizabeth Olson, "Women Make Up Majority of U.S. Law Students for First Time," *New York Times* (December 16, 2016). Retrieved from [https://www.nytimes.com/2016/12/16/business/dealbook/women-majority-of-us-law-students-first-time.html?\\_r=0](https://www.nytimes.com/2016/12/16/business/dealbook/women-majority-of-us-law-students-first-time.html?_r=0).

6 Commission on Women in the Profession, "A Current Glance at Women in the Law: January 2017," American Bar Association, Chicago. Retrieved from [http://www.americanbar.org/content/dam/aba/marketing/women/current\\_glance\\_statistics\\_january2017.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/marketing/women/current_glance_statistics_january2017.authcheckdam.pdf).

# Women Justices

## TIMELINE



<sup>1</sup> These states are Ohio (Florence Ellinwood Allen, 1923), Hawaii (Rhoda Lewis, 1959), Arizona (Lorna Lockwood, 1961), Pennsylvania (Anne X. Alpern, 1961), and North Carolina (Susie Marshall Sharp, 1962).

<sup>2</sup> The states which have not yet had a female chief justice are Delaware, Hawaii, Kentucky, Nebraska, North Dakota, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas Supreme Court (Note: The Texas Court of Criminal Appeals has had a female chief justice), and Vermont.



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