

# IMBALANCED JUSTICE: MASSACHUSETTS

The state judiciary is filled with ex-corporate lawyers and prosecutors, and corporate attorneys dominate the judicial nominating commissions.



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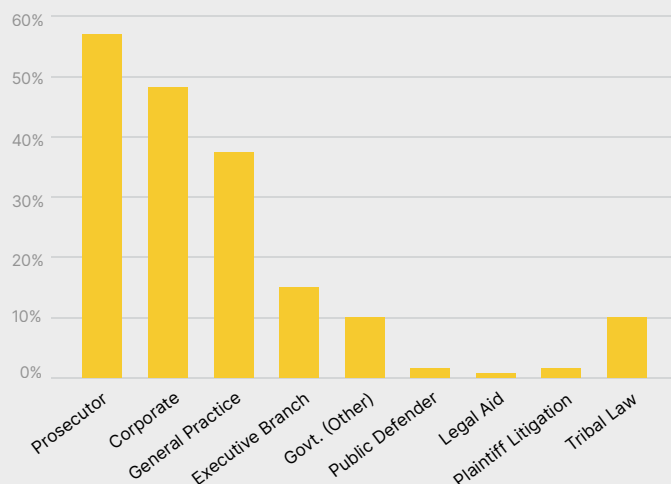
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The judiciary in Massachusetts is dominated by former prosecutors and corporate lawyers. This report examines the professional back-grounds of judges on Massachusetts' appellate and superior courts. It will detail these findings and discuss how the governor's unfettered authority over nominating judges has contributed to this problem. The report will conclude with recommendations for how to improve the judicial selection process and how to get judges on the bench who better reflect the values of everyone in the state, not just corporations.

Nearly half (48 percent) of the judges surveyed<sup>1</sup> are former corporate lawyers, which doesn't just mean that they work in a fancy office. These are lawyers at firms that specialize in representing corporations, who spend significant portions of their careers ensuring that corporations' bottom lines prevail, often at the expense of workers or consumers.



All seven current members of the state's highest court—the Massachusetts Supreme Judicial Court—worked as lawyers defending corporate interests. Only 11 percent of Massachusetts judges previously specialized in representing injured workers and consumers, and a mere two percent worked at legal aid organizations that help poor people in civil matters.

The disparity is even more glaring on the criminal side. A shocking 60 percent of Massachusetts judges are ex-prosecutors. Only three percent worked as public defenders, representing people accused of

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committing crimes who couldn't afford lawyers. Our research shows that the Massachusetts judiciary is full of people who spent their careers representing powerful institutions—big business and the state. What message does this send to young lawyers? If they want to be judges one day, they must spend years helping wealthy corporations or putting people behind bars? Moreover, injured workers or consumers may justifiably feel like the courts are biased, if they're full of ex-corporate lawyers and former prosecutors. This could destroy their confidence in the possibility of receiving a fair shot in our legal system.

Unfortunately, these shocking numbers do not make Massachusetts an outlier. The rate of former prosecutors and corporate attorneys on the bench is similar to what People's Parity Project research found in [Arizona](#), [Connecticut](#), and [Georgia](#). While President Joe Biden has appointed dozens of civil rights lawyers, public defenders, and other pro-people attorneys to the federal bench, governors across the country have continued to appoint lawyers who devoted their careers to defending corporations or helping to incarcerate people.

<sup>1</sup> We surveyed all appellate and Superior Court judges, a total of 114 judges.

The composition of the Massachusetts judiciary—and the process for selecting and confirming judicial candidates—came under scrutiny recently when Governor Maura Healey appointed Gabrielle Wolohojian, her former romantic partner and an ex-corporate attorney, to the state's highest court. This raised important questions about whether the nomination process was truly open to all, or whether one must be part of the governor's inner circle to reach the bench. With this report, we aim to show that the problems of the Massachusetts bench are not limited to one governor or one nominee; instead, there are structural flaws that have resulted in a bench that is out-of-touch with the needs of the state, and structural reforms are needed to ensure that justice is truly available to all.

## HOW JUDGES REACH THE BENCH

Since the early days of the commonwealth, Massachusetts governors have appointed judges. The only limit on their appointment power is the Governor's Council, an elected body which decides whether to confirm or reject each nominee. Like federal judges, Massachusetts judges serve "during good behavior."<sup>2</sup> Around 50 years ago, voters approved a constitutional amendment that requires judges to retire at age 70. Judges do not stand in retention elections, leaving little opportunity for democratic oversight of the judiciary.

Massachusetts is one of five states, mostly in New England, where governors have chosen to establish judicial nominating commissions (JNCs) to—in theory—recommend the most qualified candidates for judgeships.<sup>3</sup> Since 1975, governors in Massachusetts have issued executive orders to establish these commissions.

The governor's website lays out the process under the current governor's executive order. The JNC solicits applications for announced vacancies, and

then reviews applications from those who meet the minimum qualifications, which include 10 years of legal experience for a trial court judge and 13 years for an appellate judge. The JNC then conducts a deeper review, in which they consider Part II of the application. Part II "does not disclose the applicant's name and is the only part of the application seen by the JNC" during this stage of the process, according to the governor's website.

The JNC then votes on which applicants to interview, and those applicants submit letters of recommendation. The JNC reviews the whole package and assigns a commissioner to conduct "due diligence" for each interviewee, which includes talking to judges and others familiar with the applicant's work. The JNC reviews the due diligence materials and votes on which applicants to include on the list of potential nominees. A 2/3 majority is required for an applicant to be included on this list. The potential nominees are then vetted by the governor's office and the state bar, and the governor chooses a nominee. The process takes place mostly behind closed doors.

Healey's executive order imposes a code of conduct on commissioners and nominees, and this code prohibits self-dealing and requires recusal when commissioners have "professional or personal relationships" with applicants. The order also says, "The records of the Judicial Nominating Commission shall not be public records and shall be maintained in confidence to the greatest extent possible consistent with the law and the demands of justice."

Governors can choose whoever they like to serve on the JNC. When Healey picked five people for the commission that chose Wolohojian, she chose her chief of staff and her top lawyer.

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<sup>2</sup> Only a few other states, all of them in New England, have federal-like systems that either allow judges to serve until a mandatory retirement age or grant judges life tenure.

<sup>3</sup> These states are Delaware, Maine, Maryland, Massachusetts, and New Hampshire.

Healey and other recent governors have leaned heavily on corporate lawyers to help choose judges. While former Governor Deval Patrick, a Democrat who held office from January 2007 to January 2015, had worked as a civil rights attorney, corporate attorneys were the most well-represented group on his first nominating commission.

Once a governor chooses a nominee from the commission's list, that person must be confirmed by the Governor's Council, the elected body that decides whether to confirm judicial nominees. Most nominees have drawn little opposition in the council. One of Patrick's nominees drew vocal opposition back in 2012 from anti-choice and pro-gun conservatives for donations to political groups and for positions he'd taken while working in the Attorney General's office. Another Patrick appointee drew fire for his temperament, body language, and a "win-at-all-cost" attitude as a prosecutor. Nonetheless, despite drawing unusual levels of opposition, both nominees were confirmed.

Most of the current sitting judges were appointed by the previous governor, Republican Charlie Baker, whose two terms ended in 2023. Sixty percent of Baker's appointees worked as prosecutors, and 40 percent had represented corporations.

Baker's appointees faced little opposition in the Governor's Council, even though it was controlled by Democrats. One nominee to a lower court withdrew, after four members of the Council said they would vote against the nominee, due to her lack of experience and other issues. However, as in other periods in which the Governor's Council was dominated by Democrats and the governor's office was controlled by a Republican, the Council served largely as a rubber-stamp for judicial appointments.

A 2019 news article criticized the Baker administration because it hadn't appointed any Black Superior Court judges. The piece noted that the JNC and state bar committee, which advises the governor on the qualifications of potential nominees, included only a few people of color at the time. But the

## Our research shows that the Massachusetts judiciary is full of people who spent their careers representing powerful institutions.

administration's record on racial and ethnic diversity seemed to improve somewhat over time.

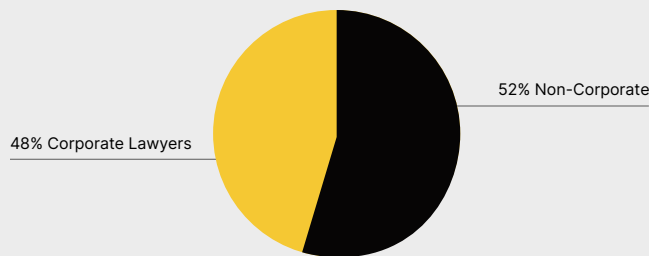
However, the public pressure to increase demographic diversity on the bench did not include a similar focus on the importance of increasing professional diversity. When Baker set up a special five-member committee<sup>4</sup> to recommend nominees to fill two high court seats in 2020, this special JNC included several corporate lawyers and no legal aid lawyers or public defenders.

Other states' nominating commissions have seen a similar disparity, but Massachusetts has a glaring lack of professional diversity on the civil side of the law. A 2018 nationwide survey of the backgrounds of commission members by the Brennan Center found that "41 percent of attorneys on commissions were practicing or had a significant history practicing corporate law, and 23 percent of commissioners were or had been plaintiffs' attorneys." The Brennan Center found that a majority of the commissioners in Georgia, Maine, and Tennessee were corporate lawyers. It said that prosecutors were underrepresented, and "attorneys representing low-income or indigent clients in either criminal or civil cases served on only seven out of the 26 commissions."

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<sup>4</sup>This is a common practice when Massachusetts governors fill a high court vacancy. Gov. Maura Healey set up a similar commission before appointing Wolohojian.





The disparity is glaring on the current Massachusetts JNC. Forty-six percent of the lawyers on Gov. Maura Healey's commission are corporate lawyers, making them—by far—the most well-represented group on Healey's commission. Only a few of the commissioners work as public defenders or legal aid lawyers, helping the neediest people, and only one member of Healey's commission specializes in representing injured workers and consumers, according to PPP's research.

It should come as no surprise that this has led to a homogenous group of appointees. Five of Healey's six appointees are former corporate lawyers, including Justice Gabrielle Wolohojian. Healey, who met Wolohojian when they both worked at the same big corporate law firm, defended the nomination. But the process exposed the problems inherent in giving a governor so much influence over the selection of judges.

## GETTING PRO-PEOPLE JUDGES INTO POWER

Fortunately, there are steps people can take to address this problem. Massachusetts voters can demand Healey appoint judges attorneys with experience helping people in need, rather than those who represented powerful institutions. They can demand a judiciary that includes more diverse viewpoints.

PPP's research in other states, including Connecticut, has found a similar disparity, with ex-prosecutors and corporate lawyers dominating the bench. Last year, activists in Connecticut, where PPP found a similar lack of professional diversity, helped keep a problematic nominee from becoming a justice. A similar story unfolded when a nominee to New York's highest court faced an unprecedented rejection by the state Senate. This type of organizing is critical to ensure that future nominees reflect the people of Massachusetts, not powerful interests.

There will be a vacancy on the Court of Appeals later this year. This is a key opportunity for people to contact elected officials, write letters to the editor, and raise awareness on social media about the need for a pro-people nominee. Activists in New York were ecstatic when, after Gov. Kathy Hochul's first high court nominee was rejected, she instead nominated a progressive chief judge to oversee the state's judiciary; with adequate mobilization, this same path could be replicated in Massachusetts.

People can also demand that the governor put pro-people lawyers on the commission that helps choose judges. This is the first step to getting more of those same kinds of lawyers on the bench. There's no justification for filling half of the seats on the commission with corporate lawyers.

There are examples of more diverse nominating commissions in other states. The two U.S. senators from Georgia, for example, have established a nominating commission for federal judges that includes multiple civil rights lawyers. According to the 2018 Brennan Center report, attorneys for injured workers and consumers were a majority of the nominating commission members in Missouri and Indiana, where the commissions' suggestions are binding and the governor must appoint from their list. It's worth noting that when Massachusetts Governor Charlie Baker was criticized for a lack of racial diversity among his nominees, he expanded his nominating commission and appointed diverse commissioners.

# Voters can also demand that their representatives on the Governor's Council actually scrutinize judicial nominees.

People can also call on their legislators to get involved. In several states, the legislature sets up the nominating commissions and requires various forms of diversity on them. Some states have constitutional commissions. The Arizona Constitution, for example, [establishes the nominating commission](#) and says that “the makeup of the committee shall, to the extent feasible, reflect the diversity of the population of the state.” Legislative changes to limit the governor’s unfettered power over judicial selection—changes designed to ultimately give the people more influence over this critical process—may be necessary in Massachusetts.

The commission itself should also aggressively solicit recommendations from advocacy groups and public interest organizations. Attorneys from non-traditional backgrounds must be encouraged to apply. If they’ve paid attention to judicial nominations, Massachusetts attorneys may be under the impression that only prosecutors and corporate attorneys can become lawyers. It will take work to change this perception. As with [gender diversity](#) in politics, candidates from nontraditional backgrounds may be less likely to believe that they can reach the bench.

Voters can also ask their elected representatives on the Governor’s Council to recruit or encourage diverse attorneys, former public defenders, legal aid lawyers, and labor union attorneys to apply for vacant judgeships.

The governor could amend her [executive order](#) to open the JNC’s records to the public. Then people would know who applied for judgeships, and this would shed light on any trends in terms of which applicants are both selected and rejected.

Voters can also demand that their representatives on the Governor’s Council actually scrutinize judicial nominees, instead of serving as a rubber stamp for the chief executive. Though Healey’s nomination of Justice Wolohojian was widely criticized, only one councilor actually voted not to confirm her. Voters have the power to elect councilors who will demand pro-people judicial nominees.

This list is necessarily incomplete, but it’s meant to show that the state of affairs on the Massachusetts bench is not inevitable. Choices by the legislature, the governor, and the Governor’s Council have resulted in a bench in which corporate attorneys and prosecutors are disproportionately represented. Each of these entities has the power to make changes, but they are unlikely to do so on their own. It’s critical that those who care about the state of justice in Massachusetts make increasing professional diversity on the bench a top priority and begin the organizing work necessary to enact these structural changes.

## MEET THE AUTHOR



## Billy Corriher

Billy Corriher is the state courts manager for PPP and a longtime advocate for fair courts and progressive judges. He worked at the Center for American Progress from 2012 to 2017. Billy has helped fight Republican attempts to pack the courts in his native North Carolina with judges who would limit the rights of workers and voters, and he has worked with progressive courts advocates around the country. He also worked as a freelance journalist

whose work appeared in Facing South, Governing, ThinkProgress, and other outlets. In 2021, Billy released a book titled *Usurpers: How voters stopped the GOP takeover of North Carolina's courts*. Billy earned his bachelor's degree in political science with a minor in journalism from the University of North Carolina-Chapel Hill and his law degree from Georgia State University.



## ABOUT PEOPLE'S PARITY PROJECT

The People's Parity Project is a movement of law students and attorneys organizing for a democratized legal system which empowers working people and opposes subordination in any form. Together, we are dismantling a profession that upholds corporate power and building in its place a system that reflects our values of justice, equity, and solidarity. [Join us!](#)

## ABOUT THE REPORT

To learn more information about the backgrounds of individual judges, [click here](#).

Written by Billy Corriher  
Designed by Eve Wallack  
Supervision by Molly Coleman

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Plaintiff (Hignall) Background Specifics									
Court	Appointed by	Prosecutor	Corporate	General practice/Executive branch Government (e Public defender/ Legal Aid)	Civil rights				
Superior Court	Baker		1			Suffolk County District Attorney			
Superior Court	Baker			1		Rubin, Rudman, Chamberlain & Marsh			
Superior Court	Baker		1			Plymouth County District Attorney's Office; Law Office of Daniel W. O'Malley; ADA Bristol County			
Superior Court	Baker			1		solo practitioner			
Superior Court	Baker		1			Pagan, Hurley & Pitzer, Worcester			
Superior Court	Baker		1			Middlesex County DA, Samuel Conso; Samuel Gibson; Samuel Timcone & Fleming			
Superior Court	Baker		1			Sherrin & Lodge			
Superior Court	Baker		1			Lynch & Lynch			
Superior Court	Baker		1			Broadhurst Tibb, Melham; Essex County DA's Office			
Superior Court	Baker		1			Morrison Mahoney, LLP			
Superior Court	Baker		1			1 Solo practitioner: Davis, Robinson & White; Annabelle & Bunkley; Assistant attorney general, AG's Office; Assistant district attorney, Suffolk County DA's Office			
Superior Court	Baker		1	1		ADA Eastern District (appellate); Assistant AG (criminal appeals); Counsel to Gov. Romney; Counsel to DA's			
Superior Court	Baker		1			ADA Hampden County; District Attorney's Office for the Northwestern District (appellate); AUSA			
Superior Court	Baker		1			ADA, White, Ivner & Aronson; Yess & Yess; Casner & Edwards			
Superior Court	Baker		1			Ropes & Gray; Assistant AG, ADA Essex County; Passport Center for Law and Public Service			
Superior Court	Baker		1	1		AG office (environmental division)			
Court of Appeals	Patrick		1			O'Malley and Myers, LLP; solo practitioner (appellate); Georgetown professor			
Court of Appeals	Patrick		1			MAAG (govt); Foley Hoag			
Court of Appeals	Patrick		1			ADA Middlesex County; Essex County; Glimmer, McLaughlin & Hanrahan			
Court of Appeals	Patrick		1			Cook & Barre			
Court of Appeals	Baker		1			ADA Suffolk; Middlesex County Sheriff's Department			
Court of Appeals	Baker		1		1	Suffolk County DA, Special counsel Ken Starr; Admin. Office of the District Court			
Court of Appeals	Baker		1		1	Goodwin Procter; MA DOT; MITA			
Court of Appeals	Baker		1		1	ADA Middlesex County, Norfolk County, Hill & Barlow			
Court of Appeals	Baker		1		1	Crosby, Healey, Roche & May PC; Foley Hoag; Norfolk County DA, Gay & Lesbian Advocates & Defenders			
Court of Appeals	Baker		1		1	Ropes & Gray; AUSA, U.S. Securities & Exchange Commission			
Court of Appeals	Baker		1			ADA Worcester County			
Court of Appeals	Baker		1		1	ADA Berkshire County; Suffolk County DA's office; Executive Office of Public Safety; Counsel to Gov. Calicco and Swift; Gadsby Hannah LLP			
Court of Appeals	Baker		1			AG's office			
Court of Appeals	Baker		1		1	Finnegan, Henderson, Farabow, Garrett & Dunner; Kirkland & Ellis; Assistant AG			
Court of Appeals	Baker		1		1	ADA Middlesex; Bingham McCutchen LLP; AUSA			
Court of Appeals	Baker		1			Suffolk County DA, Special counsel Ken Starr;			
Court of Appeals	Baker		1		1	ADA Northwestern District; Parole Board			
Court of Appeals	Baker		1						
			68.6%	47.7%	37.8%	16.3%	10.8%	3.6%	1.9%
								2.7%	10.8%